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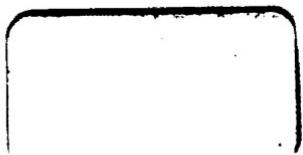
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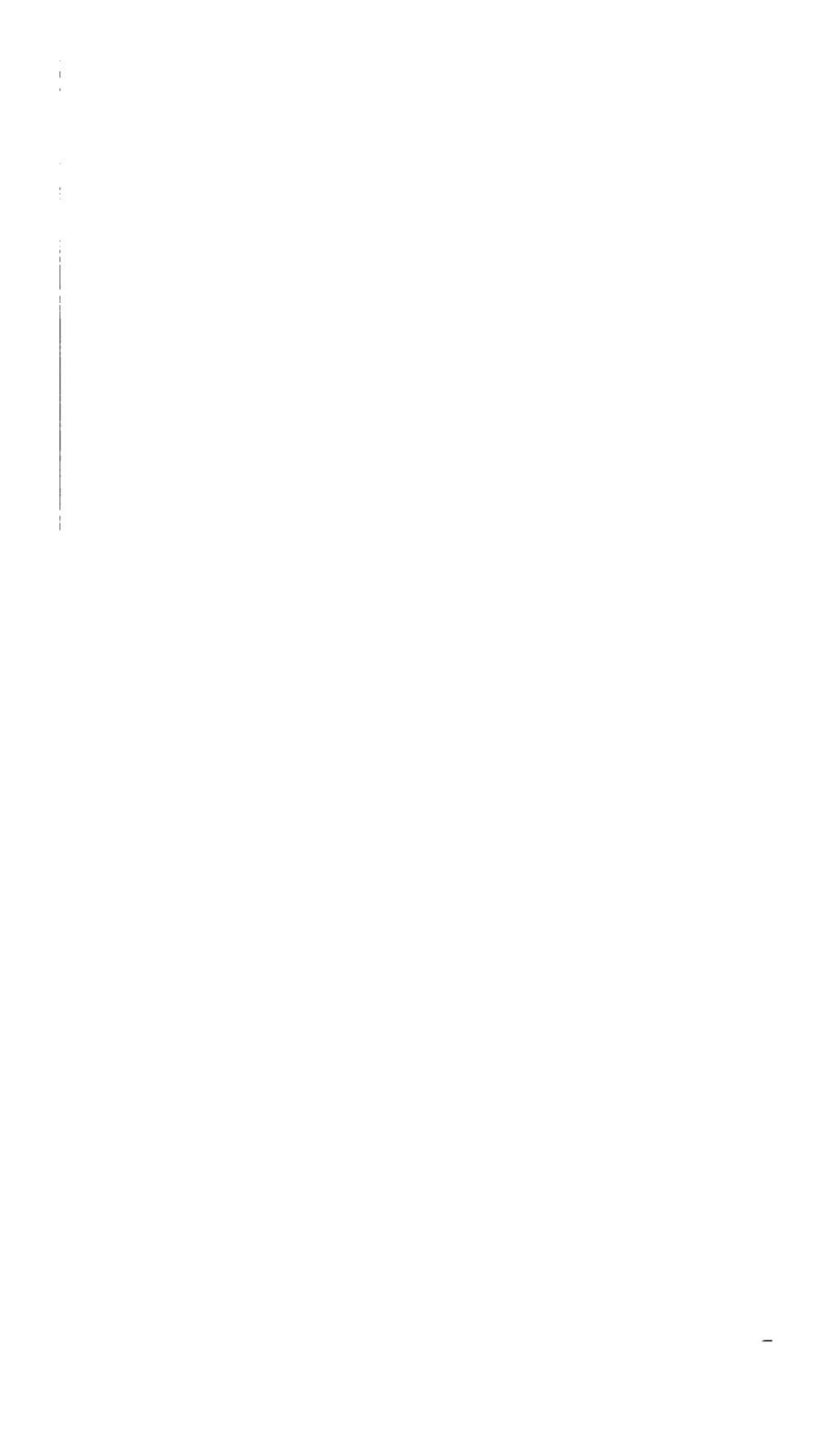
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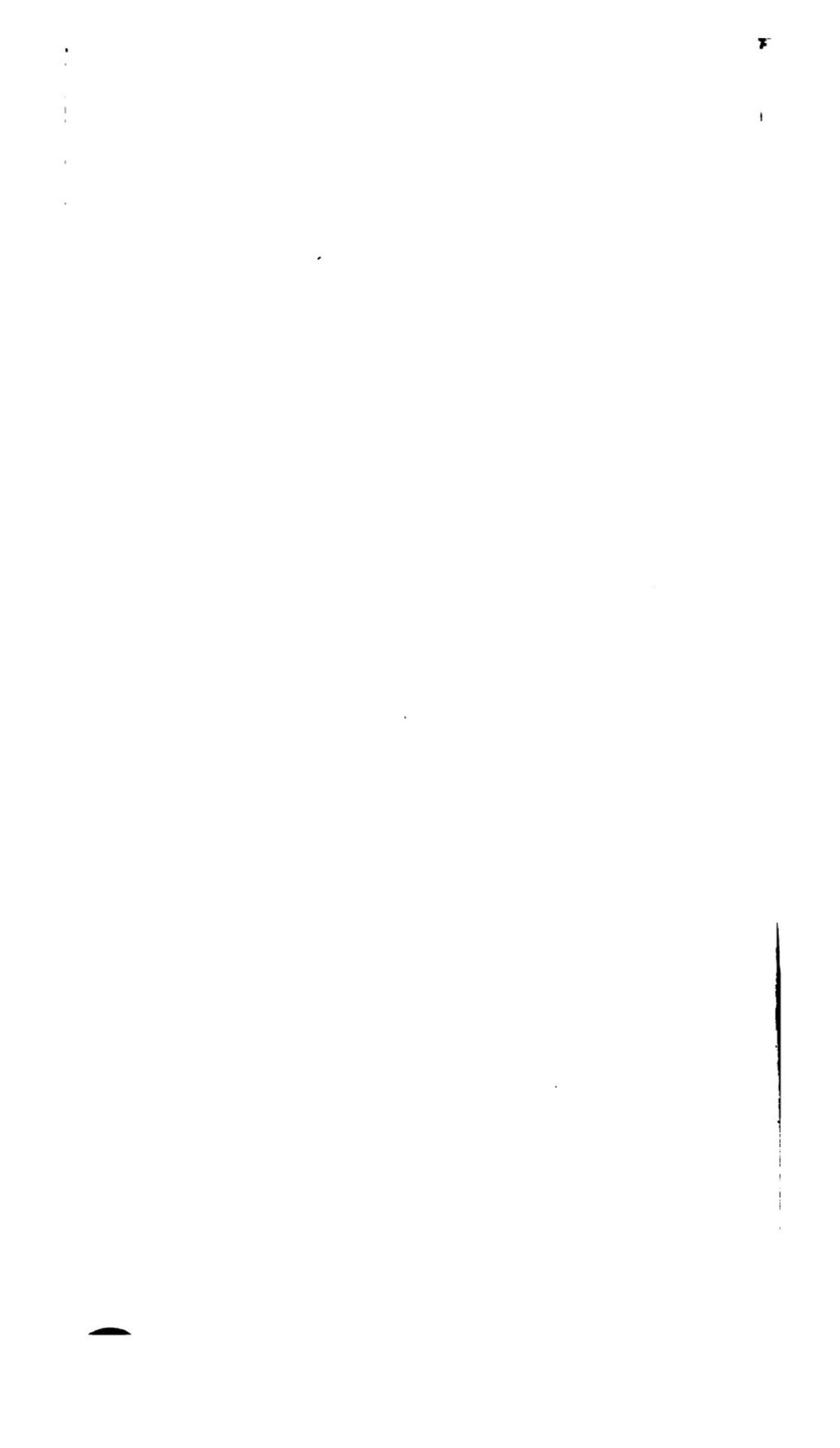
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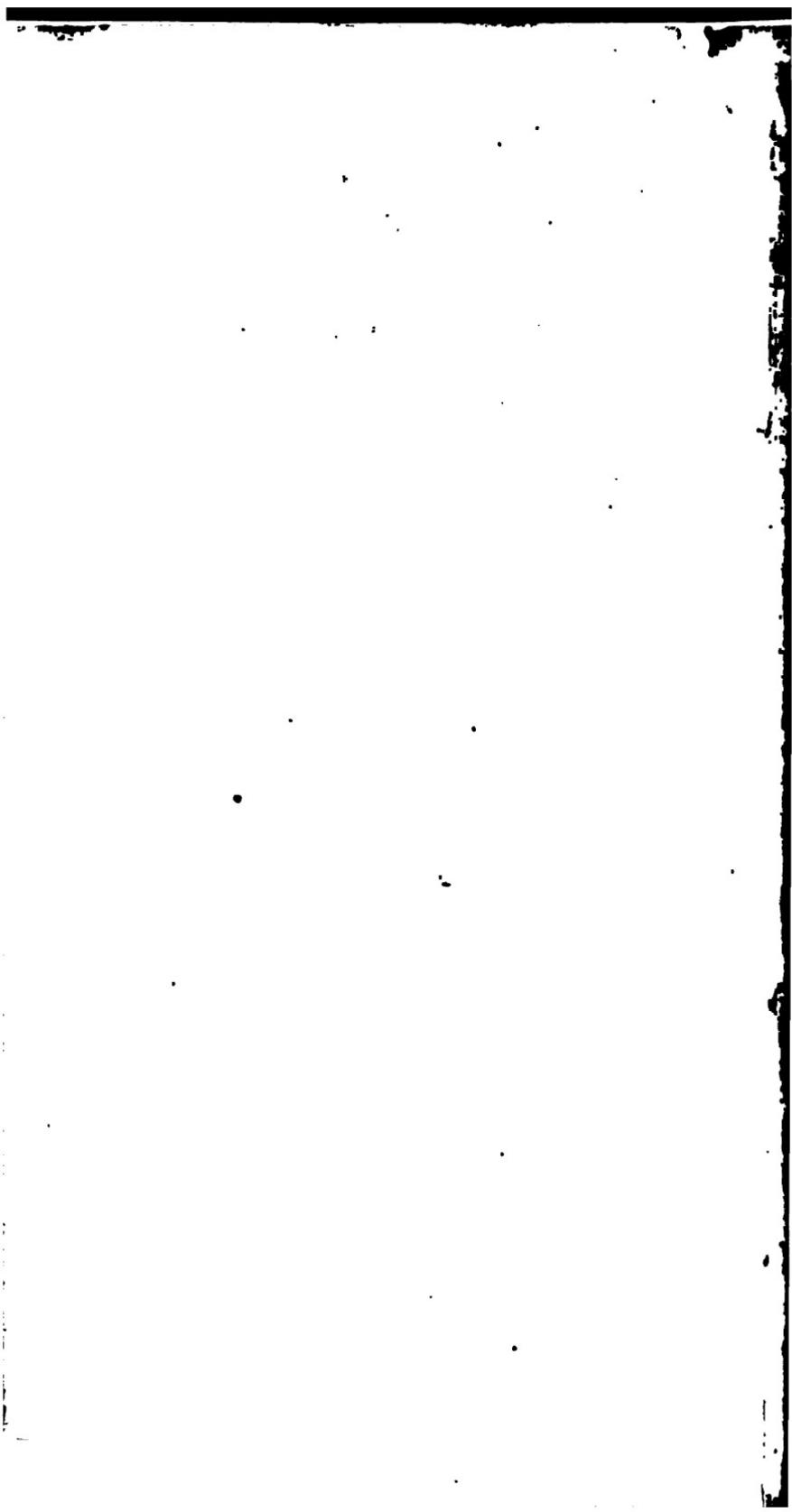




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A  
**DIGEST**  
OF THE  
*Laws of South-Carolina,*

CONTAINING THE PUBLIC STATUTE LAW OF THE STATE,  
DOWN TO THE YEAR 1822;

A COMPENDIOUS SYSTEM  
OF THE  
GENERAL PRINCIPLES AND DOCTRINES  
OF THE

**COMMON LAW,**  
THE  
*LAW OF COURTS MARTIAL,*  
AND A GREAT VARIETY OF  
**FORMS:**

THE WHOLE BEING DESIGNED, CHIEFLY, FOR THE INSTRUCTION  
AND USE OF THE  
PRIVATE CITIZEN AND INFERIOR MAGISTRATE.

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BY BENJAMIN JAMES.

*"Misera est servitus, ubi jus est vagum, aut incognitum."*

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COLLEMBIA:  
PRINTED AT THE TELESCOPE PRESS.

1822.

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MAY 8 - 1942

## ERRATA.

Page.	Line.	
9	20	Between that and was, insert work,
	12	Between twenty and years, insert seven,
	25	For finish, read publish,
10	28	For had, read has,
	31	For to, read among,
11	15	For supplied, read simplified,
	8	For lines, read links,
12	28	For where, read when, and for come, read came,
	37	Erase the word edited,
13	21	For co, read sess,
57	16	For slaves, read sales,
42	55	Between birth and place, erase comma, and and insert hyphen,
50	7	For upon, read up,
52	1	For collision, read collusion,
55	48	Between (in) and session, insert 1812,
52		Insert the following note. Where a person purchases lands by metes and bounds, said to contain a certain number of acres, more or less, he is entitled to all the lands within the limits, whatever the number of acres may be. And where metes and bounds are represented by visible marked lines, they cannot be extended, although a natural or artificial boundary may be called for beyond them. <i>Peay vs. Briggs</i> , 2 <i>Mill.</i> p. 100. A sheriff's title is conclusive between a pur- chaser and the parties to the suit, and those claiming under them: but, between a pur- chaser and a stranger, there is no good rea- son why the rule, that the plaintiff must re- cover on the strength of his own title, and not the weakness of his adversary's, should not apply with all its force. <i>Toomer vs. Purkey</i> , 1 <i>Mill.</i> p. 328,
77	7	Erase (g) and insert (e).
	40	Erase 1792, and insert 1712,
	39	Erase (e) and insert (g),
88	6	Erase (h) and insert (g),
	9	Erase (g) and insert (h),
90	15	Erase (a) and insert P. L. p. 274,
91	48	For 279, read 379, *
101	41	For thing, read think,
107	4	For or, read of,
110	35	For fourth, read fifth,
111	25	For fourth, read fifth,

## ERRATA.

Page.	Line.	
111	34	For an, read on,
114	34	For vacating, read executing,
118	8	For received, read recovered,
120	24	For the petition, read a petition,
125	39	For bone ass, read bene esse,
129	10	For an, read or,
133	22	For if, read is,
136	7	For sufficient, read insufficient,
137	12	For served, read severed,
142	21	For (c) read (d),
145	13	For court, read course,
146	42, 47	For larger, read longer,
	45	For court, read least,
147	48	For ibid, read P. L.
148	48	For on, read and,
151		Between sec. xiii. and xiv. insert the following: The commissioners of free schools shall be authorized to draw on the treasurer of the division, in which they reside, for the monies appropriated for free schools, in the same manner as they have heretofore been authorized to draw on the comptroller-general: Provided the commissioners, in their respective districts and parishes, do make returns agreeable to law, in each year, to the legislature: And if the commissioners of any district, or parish, shall fail to make such return, the appropriation for that district, or parish, shall not be paid by the treasury department, unless such return be submitted to, and approved by, a subsequent legislature. 1821, Sess. Acts, p. 5,
152	17	For lost, read lose,
172	35	For debt, read debtor,
173	28	For commissioners, read commissions,
178	25	For assessment, read assignment,
	44	For defective, read deficient,
179	7	For walls, read rules,
	8	Between fifty and cents, insert four,
	22	For now, read sworn,
184	48	Erase 5,
195	24	For principle, read principal,
196	2	For lands, read bonds,
206	45, 46	For conversant, read commorant,
212	33	For wheré, read when,
217	46	For sunt, read sum,
219	14	For received, read recovered,
241	39	For record, read second,
242	10	For free, read full,
	12	For offsets, read assets,

## ERRATA.

- | Page. | Line.  |   |
|-------|--------|---|
| 242   | 24     | For on, read or,  |
|       | 27     | For on, read or,  |
|       | 32     | For on, read in,  |
| 243   | 4      | For or, read on,  |
|       | 36     | For onset read consent,   |
| 244   | 14     | For on, read an,  |
| 245   | 25     | For terius, read tenus,   |
| 246   | 42     | Erase see post 269, and after note (c) add the following, viz: each acting magistrate, and each member of the legislature, shall be furnished with a copy of the acts and ordinances of the state. 1778, P. L. p. 298. 1817, Sess. Acts, p. 80. |
| 269   | 46     | Erase eight, and insert thirteen,   |
| 290   | 17     | For and, read a,  |
| 311   | 3      | Erase the,  |
| 333   | 5, 6   | Erase for any trespass by him committed in carrying into execution the provisions,  |
| 340   | 8      | For council, read counsel,  |
|       | 13     | Erase the before other,   |
| 350   | 46     | For one, read some,   |
| 356   | 28     | For and, read any,  |
| 360   | 10     | For 4, read 14,   |
| 367   | 40     | For agreement, read argument,   |
| 377   | 11, 12 | For release, read resale;   |
| 379   | 21     | For loose, read lose,   |
| 397   | 35     | For jurisdiction, read justification,   |
| 398   | 26     | For sessels, read a vessel,   |
| 418   | 37     | For incorporate, read incorporated,   |
| 428   | 47     | For heirs, read heir,   |
|       | 48     | For her, read law,  |
| 429   | 17     | For ever, read even,  |
|       | 50     | For to read too, and expunge the following words, viz: and all crimes under the degree of petit larceny,  |
| 430   | 3      | Between procure and councl, insert comma,   |
|       | 9      | For rere in, read rerum,  |
| 437   | 32     | For this, read thus,  |
| 440   | 4      | For assisting, read agisting,   |
| 442   | 15     | For descendant, read descent,   |
| 443   | 11     | For fonus, read foenus,   |
| 444   | 4      | For capitol, read capital,  |
|       | 5      | For house stall, read home stall,   |
| 448   | 22     | For interest, read intent,  |
|       | 41     | For not, read most,   |
| 449   | 6      | For instances, read instruments,  |
|       | 14     | For title, read till,   |
|       | 37     | For serve, read move,   |
| 450   | 14     | For such, read sort,  |
| 452   | 36     | For factum, read pactum,  |

## ERRATA.

Page.	Line.	
452	30	Between covenants and because, insert the following: in consideration of 20 <i>l.</i> to make him a lease of a farm, &c, these are good contracts,
455	36	For necessary, read very unnecessary,
456	21	For succession, read successor,
	34	For rest, read vest,
457	4	For them, read than,
	9	For aid court of the common pleas, read aid of the court of common pleas,
	24	For one, read are,
458	30	For facia, read facie,
	49	For on, read or,
460	24	For as, read is,
	26	For promiscuous, read pernicious; and for then, read the; and erase comma,
	34	Aster continue, erase comma, and insert colon,
461	8	For marked, read ranked,
	20	For bet, read but,
462	14	For party, read parties,
	22	For sealed, read delivered,
463	33	For escron, read escrow,
	4	For former, read feme,
	5	For where, read when,
466	7	For ajuslibet, read cujuslibet,
467	21	For legislature, read legislator,
468	5	For writ, read use,
	7	For peculism, read peculum,
	21	For interests, read interest,
469	44, 45	For formalaries, read formularies;
470	10	For opposite, read apposite,
472	29	For deferring, read defining,
473	41	For strictly, read strongly,
	10	For consent, read covenant,
	19	For was, read is,
	20	Between nemini and injuriam, insert facit,
	21	For of, read for,
474	21	Between bare and vest, insert lease,
	22	Erase lease,
	31	For town, read term,
476	3	For then, read that,
477	39	For divides, read devises,
	40	for heirs, read heir,
479	2	For damages, read damage,
	4	For officers, read offices,
480	34, 37	For together, read begotten,
481	4	For dower, read donor,
484	36	For which, read what,
485	37	For adventitious, read adventurous,
486	22	For prochim, read prochein,

## ERRATA.

Page.	Line.	
487	66	For the, read their,
488	39, 42	For crimer, read crimen,
491	9	For ambiguities latero, read ambiguitas latens,
	26	For devisers, read devisees,
493	5	For couse, read cause,
	40	For of, read for,
494	16	For indorser, read indorsee,
	46	For change, read charge,
495	22	For receipt, read accept,
496	42	For releaves, read releases,
498	46	Between in and form, insert common,
499	14	For change, read charge,
502	15	For by, read for,
503	8	For devise, read desire,
504	24	For principal, read principle,
	25	For misadventure, read misadventure,
506	4	For principal, read principle,
	9	For thrust, read thrusts,
	24	For breach, read branch,
507	82	For sticking, read striking,
508	21	For evidence, read evidenced,
513	14	For majoris, read majores,
514	2	For felons, read felonies,
	6	For aliquem vestuem, read aliquem vestrum;
	7	For your, read you,
515	18	For unto, read into,
	49	For loose, read base,
516	41	Expunge the before delivery,
	13	For incheat, read inchoate,
518	10	For lawyer, read buyer,
	19	For use, read usage,
521	11	For ipse, read ipso,
522	36	For his, read her,
523	18	For there, read these,
	31	Expunge them,
525	48	For quood, read quoad,
526	37	For measure, read nuisance,
527	10	For ute, read utere,
	14	For enjus, read cuius; and for caclum, read coelum,
	35	For removed, read amerced,
529	15	For vixatria, read vixatrix,
532	5, 6	For proceeds, read proceed,
533	17	For stay, read stray,
	38	For intends, read extends,
534	14	For defensible, read descasible,
	23	Between though and is, insert it,
	46	For unpins, read unpens,
	16	For deed, read dead,
536	25	Between paying and premium, insert a,

## ERRATA.

Page.	Line.	
	30	For calculated, read calculate,
	32	For loose, read lose,
537	40	For without, read within,
539	30	For varies, read raises,
	35	For in time, read entire,
543	14, 15	For country, read county,
545	38	Between are and maliciously, insert not,
547	5	Between adjudged and good, erase a, and insert no,
	8	For on, read of; and for or, read on.
	20	For house, read horse,
550	8	For distract, read distrained,
551	16	For contracts, read covenants,
552	27	For my, read any,
554	5	For by, read but,
	12	For obligation, read objection,
	43	For revive, read review,
555	15	For is, read are,
556	36	For acquaintance, read acquiescence,
559	12	For from, read of,
	28	For a, read or,
560	5	After charge, erase period, and insert comma
	6	For setting, read sitting.
562	39	For pleading, read plead,
564	39	For conclusions, read conclusive,
566	11	For virtually, read actually,
	16	For axiom, read axioms,
567	11	For submit, read rebut it,
572	3	For consent, read counsel,
	47	For lending, read leading,
583	24	For cite, read recite,
587	8	For absconded, read absconds,
591	7	For over to, read unto,
593	28	For contrivances, read controversies,
	30	For commanded, read commenced,
594	14	For one, read our,
595	8	For coopers, read corpero,
	10	For matter, read mother,
	21	For take, read taken,
	23	For matter, read mother,
	2	For master, read mother,
592	11	For cases, read causes,
603	23	For acts, read act,
604	2	For murder, read murderer,
611	26	For issue, read issued,
626	25	Between act and in, insert of assembly.
627	26	For began, read begun,
680	3	After committed, insert comma,
633	18	For person, read persons,
637	3	For place, read places.
639		

Between sections XLII and XLIII title Militia, insert the following: No appeal shall be allowed from courts-martial imposing fines on non commissionned officers and privates, unless the appellant shall accompany his appeal with an affidavit that he could not attend the court, by which he was fined; and that he does not appeal for the purpose of delay.—1815, *Sess. Acts*, p. 14.

Add the following to section VIII, title Treasury: And the treasurer of each division shall pay the salaries of the officers resident in his division, the jurors' and constables' certificates for attendance on courts within his division: And all other appropriations shall be paid by the treasurer of the upper division, unless otherwise directed by law. And each of the said treasurers shall, when he makes any payment, take a duplicate receipt, and forward the same to the comptroller-general, with his monthly report.—1820, *Sess. Acts*, p. 12.

Add the following to section XXV, title Roads: And no new road shall be granted by the legislature, unless upon a representation of the board of commissioners of the district, where the said road is to be laid out, certifying the propriety and utility thereof; and also, that three months previous notice, that such representation would be made, has been given to the persons opposed thereto, to enable them to make counter representations to the same.—1817, *Sess. Acts*, p. 80.

Page.	Line.	
642	28	For devised, read remised,
646	10	For justices, read parties,
648	38	For arrangement, read agreement,
654	37	For chap. XV, read title Conveyances:



*H.B. Law*

## DEDICATION.

### TO THE PEOPLE OF SOUTH CAROLINA.

FELLOW CITIZENS:

I have long been under the impression that a work, upon the plan of the following one, would be highly useful in simplifying our laws, and rendering them more accessible to the citizens generally: and when I published a digest of our statute law, some years ago, it was my intention, if ever a second edition should be called for, to enlarge it upon the present plan. But discouraged in the first instance, by the unpropitious circumstances under which that was put to the press, and afterwards finding that, although the sales might have been considered rapid, and the work was, in a short time, out of print, I was scarcely reimbursed the money I had actually expended about it, without any compensation whatever for my time, and labor, I had wholly abandoned the idea of another publication; and would probably have never resumed it, but for the occurrence of a domestic bereavement. Deprived of the society of one, without whose presence I had never spent five hours in my own house, for nearly twenty years, it became absolutely necessary, when retired from my usual avocations, that my mind should be employed upon some object of a nature more than ordinarily interesting: and the following work was then, for the first time, determined on, and has been prosecuted without intermission, satisfied that, if I should not be enabled to finish it, I should, at least, be remunerated for my labor, by the relief it procured.

When we advert to the nature of our government, the fundamental principle of which is, that "all power is originally vested in the people, and all free governments are founded on their authority," and then view the situation of our laws, we are presented with an extraordinary political anomaly. The people are sovereign; and the term sovereignty imports a power to prescribe rules for the government of the community: it would seem then to follow, as a necessary consequence, that the individual members, in whom, collectively, this power resides, could not possibly be ignorant of the laws of the land. Yet such is our actual situation, that, if a plea of ignorance of the law could

## DEDICATION.

be admitted in a civilized society, under any circumstances whatever, a citizen of South Carolina would be eminently entitled to that privilege. Our statute law has been accumulating for upwards of a hundred years, some of it still couched in language scarcely intelligible to the most learned in the profession, and has, from time to time, undergone so many changes and modifications, as to be wholly out of the reach of an ordinary capacity: while a knowledge of the common law of England, of force in this country, is only to be acquired by extensive reading of the English elementary writers, and an immense mass of English Reports, together with the decisions of our own courts; very few of which, till lately, have ever been published: the whole requiring leisure, learning, and pecuniary resources far above the means of ninety-nine hundredths of our citizens. And, indeed, were it not for the checks and balances wisely interposed by the venerable framers of our political constitutions, our condition would be little better than that of the subjects of the Roman tyrant, who caused the laws, to be suspended at such a height, as to be scarcely legible; or of the christian world, during the times of papal usurpation and supremacy, while the holy scriptures were confined to a language that was generally unknown. Such, however, is the happiness of our condition, so identified are the interests of the governors, and the governed, and so much public virtue, as yet, remains, that but little inconvenience has been heretofore felt from this "glorious uncertainty" of the law. Still it may be inquired, why does it exist, or rather, why had not the evil, small as it may be, been remedied? It cannot proceed from any indisposition, on the part of the government, to diffuse a general knowledge of the law to the citizens of the state: There being no privileged orders, no particular class of citizens, to be benefitted at the expense of any other class, and the representative and constituent being alike subject to the operation of the law, there can be no adequate inducement to withhold that knowledge from the people: and we know, in fact, that the legislative acts are published at the close of every session, and immediately distributed through every part of the state. The truth is, to a body composed, as our legislature is, of about one hundred and seventy members, the task of reformation without the aid of the preliminary labor of individuals, must be utterly impracticable. If, in the gradual progress of legislation, when the attention of the legislature is drawn, as it were, to single propositions, acts are past without a full knowledge of the existing provisions of the law, (and this must always happen, so long as they remain in a scattered and detached situation,) and they are, consequently, often found in collision with each other, how is it to be expected, that greater accuracy will accompany the labors of the same body, when en-

aged in a diversity of subjects at the same time, and a reformation of our whole system is at once attempted? Works of this kind require retirement, and the most laborious research; and experience proves to us, that they have, almost universally, proceeded from individuals. When, therefore, this individual research has been employed, and the detached provisions of our acts have been thus brought together, arranged under proper heads, and judiciously combined, the legislature, by availing itself of this preliminary labor, may undertake the work of reformation with a reasonable prospect of success. Such a condensed system may be subjected to the examination of a committee during the recess, and when reported, if found worthy, adopted with such exceptions and modifications, as may be deemed advisable; and thus may our statute law be supplied, and brought within the reach of almost every citizen; and a new era in legislation established.

The same difficulties exist, and the same process would probably succeed in relation to the common law. Its principles and doctrines are susceptible of methodical arrangement; and might, in the same manner, be brought to the view of the legislature. Their applicability to particular cases, like the construction of the statute law, must always rest with the judiciary. Heretofore, the evil has not been considered of sufficient magnitude for the legislature to engage the talents of distinguished lawyers in the composition of such a digest: and the emolument to be derived from such an undertaking has not been sufficient to act as an efficient stimulus to individual enterprize: mankind are generally actuated by motives of pecuniary interest; and while a lawyer of eminence can often command, for the management of a single cause, more than he could, probably, derive from the sale of a work, which would cost him the labor of years, it is not reasonable to expect that he would engage in the latter employment: besides, a man, whose reputation is established, will seldom hazard the loss of it, by engaging in an undertaking that is new, unless he is influenced by some powerful motive. The labor of a mere copyist is irksome in the extreme; and a mere compilation of the acts under their respective heads, and in the order of their dates, without any discrimination, can reflect but little credit on the compiler: it cannot therefore, be expected that any person would undertake the labor, without a certain, and adequate pecuniary recompence. A work upon the plan of the following digest, requires more labor, and a greater degree of responsibility, than many persons are willing to encounter. To select such parts of the statute law as are in force, to arrange them under proper heads, and combine them in such a manner as to form a regular and connected system, requires a perseverance in laborious research, which few are capable of

## DEDICATION.

exercising: and when we add to this the hazard of losing a well earned reputation by the great liability to error arising from the nature of the work, there is little occasion to wonder that our laws are in the situation in which we find them. Another difficulty attending the latter plan arises from the alteration in some instances, of the particular phraseology of the law, and sometimes adding new lines in the chain of connection, in order to render it more simple and intelligible. The work thus assuming, in some degree, the nature of a commentary, cannot, notwithstanding it may be substantially correct, be regarded as authority in our courts; where a strict literal copy of the statutes is required.

The occasion, which gave rise to the following work has been already stated; and it is now put to the press in the hope that I shall at least, not be a loser by it in a pecuniary point of view. Having but little reputation to lose, the hazard on that score has been set at naught. To be useful has been my chief object; and if this shall be attained, my highest ambition will be gratified. The plan that has been adopted, was preferred, not only because it required a greater degree of mental exercise, but because it was likewise believed to be calculated to bring the laws within a smaller compass, and diffuse a knowledge of them more generally among our citizens, than could be done upon any other. In the first part of the work, which contains a digest of our statute law down to the present time, care is taken, in the combination of the different sections, to insert references to the dates, where they severally come into operation, as well as to the pages of the respective volumes, from which they are taken; so that the original acts may be consulted with ease. The system of common law is compiled, chiefly, from Blackstone's commentaries: and, indeed, at the commencement of the work, I intended to confine myself entirely to this most excellent authority; but I afterwards, occasionally made use of Jacobs' law dictionary, which I found a very convenient book: and the digest is also enriched with a variety of the late decisions of the Constitutional Court, published by Mr. Mill, and edited by Messrs. Nott & M'Cord. I have also added the law of courts martial, taken from M'Comb, and adapted to our present militia system: together with an appendix containing a great variety of precedents for the use of justices of the peace, as well as private citizens.

I am far from flattering myself, that the work is free from errors: from the difficulty of the undertaking, as well as my own incompetency to the task, many will probably be found in it: and I regret extremely, that my retired situation has precluded me from an opportunity of availing myself of any assistance. So far, however, as it depended on myself, no pains have been

## DEDICATION.

xiii.

spared to render it correct, and as extensively useful as possible. And I now submit it to you, under a full persuasion, that it will experience from you that liberality and indulgence, which have always characterized the people of this state. Sincerely wishing that it may hereafter be improved upon so as to render a knowledge of the law attainable by every citizen.

I am, Fellow Citizens,

With the most respectful and affectionate regard,

Your obedient and devoted humble servant,

BENJAMIN JAMES.

*Lawrens District, April 22, 1822.*

**NOTE**—Where the word “Act” or “Law” is used, it generally relates to the section only, in which it is used, and others of the same date and belonging to the same original act, which may be ascertained by the notes. This is peculiarly necessary to be observed with respect to the penalties.

In all the calculations, one pound currency has been rated at 60 cents—one pound proclamation money at 85 cents, and one pound sterling at \$ 4 28-6. No difference has been made between English and South Carolina sterling.

P. L. Public Laws, by Judge Grimke.

Co. Acts—Acts of the several sessions since the year 1804.

**THE CONSTITUTION  
OF THE  
UNITED STATES OF AMERICA.**

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

**ARTICLE I.**

**LEGISLATURE.**

Sec. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. The House of Representatives shall consist of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative, who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of that state, in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner, as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three;

Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker, and other officers, and shall have the sole power of impeachment.

Sec. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year: so that one third may be chosen every second year. And if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator, who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state, for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro-tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Sec. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any

## CONSTITUTION OF THE

time, by law, make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceeding; punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two houses shall be sitting.

Sec. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to, and returning from, the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the house of representatives: but the senate shall propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it,

If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house, respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, be approved by him, or being disapproved by him, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in the case of a bill.

**Sec. 8. The congress shall have power—**

To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish a uniform rule of naturalization; and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, to regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies. But no appropriation of money for that use shall be for a longer term than two years.

To provide and maintain a navy.

**CONSTITUTION OF**

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

To make all laws, which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or any department or officer thereof.

*Sec. 9.* The migration or importation, of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duties shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue, to the ports of one state, over those of another: nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

**Art. 10.** No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of Congress, lay any duty on tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## A R T I C L E II.

### EXECUTIVE.

**Sec. 1.** The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the congress. But no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, one of whom at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by

## CONSTITUTION OF

ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states; and a majority of all the states shall be necessary to a choice. In every case, after choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall chose from them, by ballot, the vice-president.

The congress may determine the time of choosing electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may, by law, provide for the case of removal, death, or inability both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States; and will to the best of my ability, preserve, protect, and defend, the constitution of the United States."

Sec. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion in writing of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

*Sec. 3.* He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

*Sec. 4.* The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### A R T I C L E III.

#### JUDICIARY.

*Sec. 1.* The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

*Sec. 2.* The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies, to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of

## CONSTITUTION OF

different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, or public ministers and consuls, and those, in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## A R T I C L E IV.

Sec. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings, of every other state. And the congress may, by general laws, prescribe the manner, in which such acts, records, and proceedings, shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state, from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party, to whom such service or labor may be due.

Sec. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the

consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened,) against domestic violence.

## A R T I C L E V.

### AMENDMENTS.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

## A R T I C L E VI.

All debts contracted, and engagements entered into before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

This constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this con-

## CONSTITUTION OF

situation: But no religious test shall ever be required as a qualification to any office of public trust under the United States.

### ARTICLE VII.

**The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.**

### AMENDMENTS.

*The following Articles in addition to, and amendment of, the Constitution of the United States, having been ratified by the legislatures of nine states, are equally obligatory with the Constitution itself.*

After the first enumeration required by the first article of the constitution, there shall be one representative for every 30,000, until the number shall amount to 100, after which the proportion shall be so regulated by congress, that there shall be, not less than 100 representatives, nor less than one representative for every 40,000 persons, until the number of representatives shall amount to 200, after which the proportion shall be so regulated by congress, that there shall not be less than 200 representatives, nor more than one representative for every 50,000 persons.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or pub-

tic danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the state and district wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest

**CONSTITUTION OF**

numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president, shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

**THE CONSTITUTION  
OR THE  
STATE OF SOUTH CAROLINA.**

We, the delegates of the people of the State of South Carolina, in general convention met, do ordain and establish this constitution for its government.

**ARTICLE I.**

*Sec. 1.* The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives.

*Sec. 2.* The house of representatives shall be composed of members, chosen by ballot, every second year, by the citizens of this state, qualified as in this constitution is provided.

*Sec. 3.* The several election districts in this state, shall elect the following number for representatives, yiz:

Charleston, including St. Philip and St. Michael, fifteen members; Christ Church, three members; St. John, Berkley, three members; St. Andrew, three members; St. George, Dorchester, three members; St. James, Goose Creek, three members; St. Thomas and St. Dennis, three members; St. Paul, three members; St. Bartholomew, three members; St. James, Santer, three members; St. John, Colleton, three members; St. Stephen, three members; St. Helena, three members; St. Luke, three members; Prince William, three members; St. Peter three members; All Saints, (including its ancient boundaries,) one member; Winyaw, (not including any part of All Saints) three members; Kingston, (not including any part of All Saints,) two members; Williamsburgh, two members; Liberty, two members; Marlborough two members; Chesterfield, two members; Darlington, two members; York, three members; Chester, two members; Fairfield, two members; Richland, two members; Lancaster, two members; Kershaw, two members; Claremont, two members; Clarendon, two members; Abbeville, three members; Edgefield, three members; Newberry, (including the fork between Broad and Saluda rivers) three members; Laurens, three members; Union, two members; Spartan, two members; Greenville, two members; Pendleton, three

## CONSTITUTION OF

members; St. Matthew, two members; Orange, two members; Winton, (including the district between Savannah river and the north fork of Edisto) three members; Saxe-gotha, three members.

Sec. 4. Every free white man, of the age of twenty-one years, being a citizen of this state, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been legally seized and possessed, at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district in which he offers to give his vote six months before the said election, and hath paid a tax the preceding year of three shillings sterling, towards the support of this government, shall have a right to vote for a member or members to serve in either branch of the legislature, for the election district in which he holds such property, or is so resident.

Sec. 5. The returning officer, or any other person present, entitled to vote, may require any person who shall offer his vote at an election, to produce a certificate of his citizenship, and a receipt from the tax collector, of his having paid a tax, entitling him to vote, or to swear, or affirm, that he is duly qualified to vote agreeably to this constitution.

Sec. 6. No person shall be eligible to a seat in the house of representatives, unless he is a free white man, of the age of twenty-one years, and hath been a citizen and resident in this state three years previous to his election. If a resident in the election district, he shall not be eligible to a seat in the house of representatives, unless he be legally seized and possessed, in his own right, of a settled freehold estate of five hundred acres of land, and ten negroes; or of a real estate of the value of one hundred and fifty pounds sterling, clear of debt. If a non-resident, he shall be legally seized and possessed of a settled freehold estate therein, of the value of five hundred pounds sterling, clear of debt.

Sec. 7. The senate shall be composed of members to be chosen for four years, in the following proportions, by the citizens of this state, qualified to elect members to the house of representatives, at the same time, in the same manner, and at the same places where they shall vote for representatives, viz:

Charleston, including St. Philip and St. Michael, two members; Christ Church, one member; St. John, Berkley, one member; St. Andrew, one member; St. George, one member; St. James, Goose creek, one member; St. Thomas and St. Dennis, one member; St. Paul, one member; St. Bartholomew, one member; St. James, Santee, one member; St. John, Colleton, one member; St. Stephen, one member; St. Helena, one member;

St. Luke, one member; Prince William, one member; St. Peter, one member; All Saints, one member; Winyaw and Williamsburgh, one member; Liberty and Kingston, one member; Marlborough, Chesterfield and Darlington, two members; York, one member; Fairfield, Richland and Chester, one member; Lancaster and Kershaw, one member; Claremont and Clarendon, one member; Abbeville, one member; Edgefield, one member; Newberry, (including the fork between Broad and Saluda rivers,) one member; Laurens, one member; Union, one member; Spartan, one member; Greenville, one member; Pendleton, one member; St. Matthew and Orange, one member; Winton, (including the district between Savannah river and the north fork of Edisto,) one member; Saxe-gotha, one member.

**Sec. 8.** No person shall be eligible to a seat in the senate unless he is a free white man, of the age of thirty years, and hath been a citizen and resident of this state five years previous to his election. If a resident in the election district, he shall not be eligible, unless he be legally seized and possessed, in his own right, of a settled freehold estate of the value of three hundred pounds sterling, clear of debt. If a non-resident in the election district, he shall not be eligible unless he be legally seized and possessed, in his own right, of a settled freehold or estate in the said district, of the value of one thousand pounds sterling, clear of debt.

**Sec. 9.** Immediately after the senators shall be assembled in consequence of the first election, they shall be divided by lot into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year; so that one half thereof as near as possible may be chosen for ever thereafter every second year, for the term of four years.

**Sec. 10.** Senators and members of the house of representatives shall be chosen on the second Monday in October next, and the day following, and on the same days in every second year thereafter, in such manner and at such time as are herein directed. And shall meet on the fourth Monday in November, annually, at Columbia (which shall remain the seat of government until otherwise determined by the concurrence of two thirds of both branches of the whole representation) unless the casualties of war or contagious disorders should render it unsafe to meet there, in either of which cases, the governor or commander in chief for the time being, may, by proclamation, appoint a more secure and convenient place of meeting.

**Sec. 11.** Each house shall judge of the elections, returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number

may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as may be provided by law.

Sec. 12. Each house shall choose by ballot its own officers, determine its rules of proceeding, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Sec. 13. Each house may punish by imprisonment during its sitting, any person not a member, who shall be guilty of disrespect to the house by any disorderly or contemptuous behaviour in its presence, or who, during the time of its sitting, shall threaten harm to the body or estate of any member, for any thing said or done in either house, or who shall assault any of them therefor; or who shall assault or arrest any witness, or other person ordered to attend the house, in his going to or returning therefrom, or who shall rescue any person arrested by order of the house.

Sec. 14. The members of both houses shall be protected in their persons and estates, during their attendance on, going to, and returning from, the legislature, and ten days previous to the sitting, and ten days after the adjournment of the legislature. But these privileges shall not be extended so far as to protect any member who shall be charged with treason, felony or breach of the peace.

Sec. 15. Bills for raising a revenue shall originate in the house of representatives, but may be altered, amended or rejected by the senate.

All other bills may originate in either house, and may be amended, altered or rejected by the other.

Sec. 16. No bill or ordinance shall have the force of law, until it shall have been read three times, and on three several days, in each house, has had the great seal affixed to it, and has been signed in the senate house, by the president of the senate and speaker of the house of representatives.

Sec. 17. No money shall be drawn out of the public treasury but by the legislative authority of the state.

Sec. 18. The members of the legislature, who shall assemble under this constitution, shall be entitled to receive out of the public treasury, as a compensation for their expenses, a sum not exceeding seven shillings sterling a day, during their attendance on, going to, and returning from, the legislature; but the same may be increased or diminished by law, if circumstances shall require: but no alterations shall be made by any legislature, to take effect during the existence of the legislature which shall make such alteration.

Sec. 19. Neither house shall, during their session, without the consent of the other, adjourn for more than three days, nor

to any other place than that in which the two houses shall be sitting.

Sec. 20. No bill or ordinance, which shall have been rejected by either house, shall be brought in again during the sitting, without leave of the house, and notice of six days being previously given.

Sec. 21. No person shall be eligible to a seat in the legislature whilst he holds any office of profit or trust under this state, the United States, or either of them, or under any other power, except officers in the militia, army or navy of this state, justices of the peace, or justices of the county courts, while they receive no salaries; nor shall any contractor of the army or navy of this state, the United States, or either of them, or the agents of such contractor, be eligible to a seat in either house. And if any member shall accept or exercise any of the said disqualifying offices, he shall vacate his seat.

Sec. 22. If any election district shall neglect to choose a member or members on the days of election, or if any person, chosen a member of either house, should refuse to qualify and take his seat, or should die, depart the state, or accept of any disqualifying office, a writ of election shall be issued by the president of the senate, or speaker of the house of representatives, as the case may be, for the purpose of filling up the vacancy thereby occasioned, for the remainder of the term for which the person so refusing to qualify, dying, departing the state, or accepting a disqualifying office, was elected to serve.

Sec. 23. And whereas the ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or public preacher of any religious persuasion, whilst he continues in the exercise of his pastoral functions, shall be eligible to the office of governor, lieutenant-governor, or to a seat in the senate or house of representatives.

## ARTICLE II.

Sec. 1. The executive authority of this state shall be vested in a governor, to be chosen in manner following: as soon as may be, after the first meeting of the senate and house of representatives, and at every first meeting of the house of representatives thereafter, when a majority of both houses shall be present, the senate and house of representatives shall jointly, in the house of representatives, choose by ballot, a governor to continue for two years, and until a new election shall be made.

Sec. 2. No person shall be eligible to the office of governor, until he hath attained the age of thirty years, and hath resided

## CONSTITUTION OF

within this state, and been a citizen thereof, ten years, and unless he be seized and possessed of a settled estate within the same, in his own right, of the value of fifteen hundred pounds sterling, clear of debt.

No person having served two years as governor, shall be eligible to that office till after the expiration of four years.

No person shall hold the office of governor and any other office or commission, civil or military, (except in the militia,) either in this state or under any state, or the United States, or any other power, at one and the same time.

Sec. 3. A lieutenant-governor shall be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the governor.

Sec. 4. A member of the senate or house of representatives, being chosen and acting as governor or lieutenant governor, shall vacate his seat, and another person shall be elected in his stead.

Sec. 5. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant governor shall succeed to his office. And in case of the impeachment of the lieutenant governor or his removal from office, death, resignation, or absence from the state, the president of the senate shall succeed to his office, until a nomination of those offices respectively, shall be made by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was elected.

Sec. 6. The governor shall be commander in chief of the army and navy of this state, and of the militia, except when they shall be called into the actual service of the United States.

Sec. 7. He shall have power to grant reprieves and pardons, after conviction, (except in cases of impeachment,) in such manner, on such terms, and under such restrictions as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed by law.

Sec. 8. He shall take care that the laws be faithfully executed in mercy.

Sec. 9. He shall have power to prohibit the exportation of provision for any time not exceeding 30 days.

Sec. 10. He shall at stated times receive for his services a compensation which shall be neither increased or diminished during the period for which he shall have been elected.

Sec. 11. All officers in the executive department, when required by the governor, shall give him information in writing upon any subject relating to the duties of their respective offices.

Sec. 12. The governor shall from time to time give to the general assembly information of the condition of the state, and

recommend to their consideration such measures as he shall judge necessary and expedient.

Sec. 13. He may, on extraordinary occasions, convene the general assembly, and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the fourth Monday in the month of November then ensuing.

### A R T I C L E III.

Sec. 1. The judicial power shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish.

The judges of each shall hold their commissions during good behaviour; and the judges of the superior courts shall, at stated times, receive a compensation for their services, which shall neither be increased or diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust, under this state, the United States, or any other power.

Sec. 2. The style of all processes shall be, "The state of South Carolina." All prosecutions shall be carried on in the name and by the authority of the state of South Carolina, and conclude—“against the peace and dignity of the same.”

### A R T I C L E IV.

All persons who shall be chosen or appointed to any office of profit or trust, before entering on the execution thereof, shall take the following oath: “I do swear (or affirm) that I am duly qualified according to the constitution of this state, to exercise the office to which I have been appointed, and will, to the best of my abilities, discharge the duties thereof, and preserve, protect and defend the constitution of this state, and of the United States.”

### A R T I C L E V.

Sec. 1. The house of representatives shall have the sole power of impeaching; but no impeachment shall be made, unless with the concurrence of two thirds of the house of representatives.

Sec. 2. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

## CONSTITUTION OF

**Sec. 3.** The governor, lieutenant-governor, and all the civil officers, shall be liable to impeachment, for any misdemeanor in office; but judgment in such cases, shall not extend further than to the removal from office, and disqualification to hold any office of honor, trust, or profit, under this state.—The party convicted shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

### ARTICLE VI.

**Sec. 1.** The judges of the superior courts, commissioners of the treasury, secretary of the state, and surveyor-general, shall be elected by the joint ballot of both houses, in the house of representatives. The commissioners of the treasury, secretary of this state, and surveyor-general, shall hold their offices for four years; but shall not be eligible again for four years after the expiration of the time for which they shall have been elected.

**Sec. 2.** All other officers shall be appointed as they hitherto have been, until otherwise directed by law; but sheriffs shall hold their offices for four years, and not be again eligible for four years after the term for which they shall have been elected.

**Sec. 3.** All commissions shall be in the name and by the authority of the state of South Carolina, and be sealed with the seal of the state, and be signed by the governor.

### ARTICLE VII.

All laws of force in this state, at the passing of this constitution, shall so continue, until altered or repealed by the legislature, except where they are temporary, in which case they shall expire at the times respectively limited for their duration, if not continued by act of the legislature.

### ARTICLE VIII.

**Sec. 1.** The free exercise and enjoyment of religious profession and worship without discrimination or preference, shall, for ever hereafter, be allowed within this state to all mankind; provided that the liberty of conscience thereby declared, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Sec. 2.** The rights, privileges, immunities and estates of both civil and religious societies, and of corporate bodies, shall remain as if the constitution of this state had not been altered or amended.

## ARTICLE IX.

*Sec. 1.* All power is originally vested in the people; and all free governments are founded on their authority, and are instituted for their peace, safety and happiness.

*Sec. 2.* No freeman of this state, shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land; nor shall any bill of attainder, ex post facto law, or law impairing the obligation of contracts, ever be passed by the legislature of this state.

*Sec. 3.* The military shall be subordinate to the civil power.

*Sec. 4.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

*Sec. 5.* The legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for any longer time than during good behaviour.

*Sec. 6.* The trial by jury, as heretofore used in this state, and the liberty of the press, shall be forever inviolably preserved.

## ARTICLE X.

*Sec. 1.* The business of the treasury shall be, in future, conducted by two treasurers, one of whom shall hold his office and reside at Columbia; the other shall hold his office and reside in Charleston.

*Sec. 2.* The secretary of state and surveyor general shall hold their offices both in Columbia and in Charleston. They shall reside at one place and their deputies at the other.

*Sec. 3.* At the conclusion of the circuits, the judges shall meet and sit at Columbia, for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgments, and such points of law as may be submitted to them. From Columbia they shall proceed to Charleston, and there hear and determine all such motions for new trials and in arrest of judgment, and such points of law as may be submitted to them.

*Sec. 4.* The governor shall always reside, during the sitting of the legislature, at the place where their session may be held, and at all other times, wherever, in his opinion, the public good may require.

*Sec. 5.* The legislature shall, as soon as may be convenient, pass laws for the abolition of the rights of primogeniture and for giving an equitable distribution of the real estate of intestates.

## CONSTITUTION OF ARTICLE XI.

No convention of the people shall be called, unless by the concurrence of two thirds of both branches of the whole representation.

No part of this constitution shall be altered, unless a bill to alter the same shall have been read three times in the house of representatives, and three times in the senate, and agreed to by two-thirds of both branches of the whole representation; neither shall any alteration take place until the bill so agreed to, be published three months previous to a new election for members to the house of representatives; and if the alteration proposed by the legislature shall be agreed to in their first session, by two-thirds of the whole representation in both branches of the legislature, after the same shall have been read three times, or three several days in each house, then, and not otherwise, the same shall become a part of the constitution.

## AMENDMENTS,

Ratified December 17, 1808.

The following sections in amendment of the third, seventh and ninth sections of the first article of the constitution of this state, shall be, and they are hereby declared to be valid parts of the said constitution; and the said third, seventh and ninth sections, or such parts thereof, as are repugnant to such amendments, are hereby repealed and made void.

The house of representatives shall consist of one hundred and twenty-four members; to be apportioned among the several election districts of the state, according to the number of white inhabitants contained, and the amount of all taxes raised by the legislature, whether direct or indirect, or of whatever species, paid in each, deducting therefrom, all taxes paid on account of property held in any other district, and adding thereto all taxes elsewhere paid on account of property held in such district; an enumeration of the white inhabitants for this purpose shall be made in the year one thousand eight hundred and nine, and in the course of every tenth year thereafter, in such manner as shall be by law directed; and representatives shall be assigned to the different districts in the above mentioned proportion, by act of the legislature at the session immediately succeeding the above enumeration.

If the enumeration herein directed should not be made in the course of the year appointed for the purpose by these amendments, it shall be the duty of the governor to have it effected as soon thereafter as shall be practicable.

## SOUTH CAROLINA.

68

In assigning representatives to the several districts of the state, the legislature shall allow one representative for every sixty-second part of the whole number of white inhabitants in the state; and one representative also, for every sixty-second part of the whole taxes raised by the legislature of the state. The legislature shall further allow one representative for such fractions of the sixty second part of the white inhabitants of the state, and of the sixty-second part of the taxes raised by the legislature of the state, as, when added together, form a unit.

In every apportionment of representation under these amendments, which shall take place after the first appointment, the amount of taxes shall be estimated from the average of the ten preceding years; but the first apportionment shall be founded upon the tax of the preceding year, excluding from the amount thereof the whole produce of the tax on slaves at public auction.

If in the apportionment of representatives under these amendments, any election district shall appear not to be entitled, from its population and its taxes, to a representative, such election district shall, nevertheless, send one representative; and if there should be still a deficiency of the number of representatives required by these amendments, such deficiency shall be supplied by assigning representatives to those election districts having the largest surplus fractions; whether those fractions consist of a combination of population and of taxes, or of population or of taxes separately, until the number of one hundred and twenty-four members be provided.

No apportionment under these amendments shall be construed to take effect in any manner, until the general election which shall succeed such apportionment.

The election districts for members of the house of representatives, shall be and remain as heretofore established, except Saxe-gotha and Newberry, in which the boundaries shall be altered as follows, viz. That part of Lexington in the fork of Broad and Saluda rivers, shall no longer compose a part of the election district of Newberry, but shall be henceforth attached to and form a part of Saxe-gotha. And also except Orange and Barnwell or Winton, in which the boundaries shall be altered as follows, viz. That part of Orange in the fork of Edisto, shall no longer compose a part of the election district of Barnwell or Winton, but shall be henceforth attached and to form a part of Orange election district.

The senate shall be composed of one member from each election district, as now established for the election of members of the house of representatives, except the district formed by the parishes of St. Philip and St. Michael, to which shall be allowed two senators as heretofore.

## CONSTITUTION OF

The seats of those senators who under the constitution shall represent two or more election districts, on the day preceding the second Monday of October, which will be in the year one thousand eight hundred and ten, shall be vacated on that day, and the new senators who shall represent such districts under these amendments, shall immediately after they shall have been assembled under the first election, be divided by lots into two classes; the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year; and the number of these classes shall be proportioned, that one half of the whole number of senators may, as nearly as possible, continue to be chosen thenceafter, every second year.

None of these amendments becoming parts of the constitution of this state, shall be altered, unless a bill to alter the same shall have been read on three several days in the house of representatives, and on three several days in the senate, and agreed to at the second and third reading, by two-thirds of the whole representation, in each branch of the legislature; neither shall any alteration take place, until the bill so agreed to, be published three months previous to a new election for members to the house of representatives; and if the alteration proposed by the legislature shall be agreed to in their first session, by two-thirds of the whole representation, in each branch of the legislature, after the same shall have been read on three several days in each house, then, and not otherwise, the same shall become a part of the constitution.

### AMENDMENT,

*Ratified December 19, 1810.*

That the fourth section of the first article of the constitution of this state be altered and amended to read as follows: Every free white man of the age of twenty-one years, paupers and non-commissioned officers and private soldiers of the army of the United States excepted, being a citizen of this state, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land or a town lot, of which he hath been legally seized and possessed at least six months before such election, or not having such freehold or town lot, hath been a resident in the election district in which he offers to give his vote, six months before the said election, shall have a right to vote for a member or members to serve in either branch of the legislature, for the election district in which he holds such property, or is so resident.

AMENDMENT,

*Ratified December 19, 1816.*

That the third section of the tenth article of the constitution of this state, be altered and amended to read as follows:—The Judges shall, at such times and places as shall be prescribed by act of the legislature of this state, meet and sit for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them.

AMENDMENT,

*Ratified December 20, 1820.*

That all that territory lying within the chartered limits of this state, and which was ceded by the Cherokee nation, in a treaty concluded at Washington, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and sixteen, and confirmed by an act of the legislature of this state, passed on the nineteenth day of December, in the same year, shall be, and the same is hereby declared to be annexed to, and shall form and continue a part of the election district of Pendleton.

**A DIGEST  
OF THE  
LAWS OF SOUTH CAROLINA**



**ALIENS.**

ALL free white persons, aliens, enemies, fugitives from justice, and persons banished from either of the United States excepted, who shall reside in this state, shall, on taking and subscribing the oath or affirmation of allegiance, before one of the judges of the court of common pleas, be deemed denizens, so as to enable such persons to purchase and hold real property within this state; and in all other respects, to entitle such persons to the like protection from the laws of this state, as citizens are entitled to: Provided the certificate hereinafter required, shall be recorded within the time by law prescribed.—a.

II. The judge, before whom such oath shall be taken, shall certify the same; in which certificate, when given to a family, shall be inserted the name and age of each, together with the place of nativity and former residence; all which shall be declared, on oath, by the head of each family; and when given to a single person, his or her place of nativity and former residence shall be inserted; and such certificate shall be recorded in the office of the secretary of state either in Charleston or Columbia, within sixty days.—a.

III. The secretary of state shall be authorised to demand for recording each certificate for one person, twenty five cents; for a family not exceeding three, fifty cents, and for a family exceeding that number, one dollar.—a.

IV. Nothing herein contained shall be construed to confer on any such denizen the right of voting at any election of members of either branch of the legislature, or of any public officer of the state, or of being eligible to any office of trust or profit in this state.—a.

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a—1797, 2d Faust, p. 273.

V. Any citizen or alien, who has entered into any bona fide contract, or received any grant or deed of conveyance for any real property in this state, or whose titles are derived from, or through aliens, either mediately or immediately, shall hold and enjoy the same in fee simple, or for any less estate, according to the nature of his or her contract, grant or other deed of conveyance: Provided that every alien, previously to his or her being entitled to avail him or herself of the benefit hereof, shall declare his or her intention to become a citizen of the United States, agreeably to the acts of congress in such case made and provided: and provided also, that no alien entitled to real property, under the foregoing provisions, shall enjoy any other privilege of a citizen of the United States; and that nothing herein contained shall affect any grant of real property heretofore made by the legislature, or any descent already cast.—(b.)

VI. All persons holding property in this state under the foregoing provisions, shall have power to convey or devise the same to their child or children, grand child or grand children, notwithstanding they or any of them, may have been born previously to the said person's conveying or devising the same, or having acquired title thereto; and in case any person holding real property as aforesaid, shall not alien or devise the same; it shall be divided and distributed among his or her relations, agreeably to the acts giving an equitable distribution of the real estate of intestates: provided nevertheless, that the child or grand child, children or grand children, to whom conveyances or devices as aforesaid, may be made, and also the relations entitled as aforesaid, to distributive proportions of the real property of those who have not aliened or devised their real property, shall become a resident or residents in this state, within twelve months after the date of the conveyances made unto him, her or them, or of the decease of the person or persons deviving the same, or dying intestate, as to such real property, and she become a citizen or citizens of this state, within as short a period as he, she or they shall be enabled to become so under the existing laws.—(b.)

VII. It shall be lawful for any alien to lend money at a rate of interest not exceeding seven dollars per centum per annum, upon the security of any freehold or leasehold estate in this state; and to hold the same as an effectual security for the money lent, and to prosecute any suit or suits for the recovery of the same, whether the foreign state of which such alien is a subject be at war with the United States or not.—(c.)

VIII. In case of non-payment of the money lent upon such security, with the interest due thereon, at the time therein stip-

## ALIENS.

ulated and agreed upon, it shall be lawful for every such alien to bring and prosecute, by himself or his lawful attorney, any suit or suits at common law, for the recovery of his demand on any bond or other collateral security given or entered into, or on any covenant on the part of the borrower, contained in any such mortgage, deed or deeds; and also his or her bill in the Court of Equity, praying a decree of sale of such mortgaged premises, for payment of the debt due thereon: in which said suit or suits, the plaintiff shall be entitled to like remedy and remedies for recovering of his debt and costs due, as any citizen of this state may or can have.—(c.)

(c)—1784, P. L. p. 354

*Note.*—Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions:

First.—He shall have declared on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the states, having common law jurisdiction, and a seal, and clerk or prothonotary, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Second.—He shall at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth, absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever; and particularly by name, the prince, potentate, state, or sovereignty, whereof he was before, a citizen or subject; whose proceedings shall be recorded by the clerk of the court.

Third.—The court admitting such alien, shall be satisfied that he has resided within the United States, five years at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; the oath of the applicant in no case, to be allowed to prove his residence.

Fourth.—In case the alien applying to be admitted to citizenship shall have borne any hereditary title, or have been born of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title, or order of nobility, in the court to which his application shall be made; which renunciation shall be recorded in the said court: Provided, that whoever has been a native citizen, denizen, or subject of any country, state or sovereign, with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States.

In addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens, make registry and obtain certificates in the following manner, to wit: Every person desirous of being naturalized, shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty years, or held in service, shall be reported by his parents, guardian, master or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birth, place, age, nation and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever

## ATTACHMENT.

**E**VERT person, whether an inhabitant of this state or not, having occasion to commence a suit or action in any court of common pleas in this state, against any person or persons whomsoever residing or being without the limits thereof, for any cause of action whatsoever actually accrued, shall and may, upon application to the clerk (o) of any district court of this state having jurisdiction, and giving bond to the defendant in double the amount for which the attachment issues, to be taken by and lodged with the said clerk, to be answerable for all damages which the defendant may sustain from any illegal conduct in the obtaining of such attachment, have a writ of attachment to be issued in common form by the said clerk, and directed to all and singular the sheriffs of the said state, requiring and commanding them immediately, in their respective districts, to attach the monies, goods, chattels, debts and books of account, and also the lands, tenements and hereditaments, and other real estates (p) of such absent defendant in the hands of any person or persons whomsoever; and the attaching of any part thereof, in the name of the whole, that is in such persons

(o)—1799, 2d Faust, p. 315. (p)—1783, P. L. p. 315.

be shall be required, a certificate, under his hand and seal of office, of such report and registry, and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for certificate to an individual or family, fifty cents: and such certificate shall be exhibited to the court by every alien, who may arrive in the United States after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: provided that the right of citizenship shall not descend to persons whose fathers have never resided within the United States: and provided also, that no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid, without the consent of the legislature of the state in which such person was proscribed. See laws of U. S. vol. 6, p. 74.

Declaration of intention to become a citizen of the United States, and to renounce all allegiance to every foreign government, dispensed with in the case of an alien residing within the limits, and under the jurisdiction of the United States at any time between the 18th day of June 1798, and the 14th day of April 1802, and continuing to reside within the same; and the widows and children of aliens, who had given three years notice, and made the declaration on oath or affirmation required by the 2d section, but died before they were actually naturalized, are entitled to all the rights of citizenship upon taking the oaths prescribed by law. See L. U. S. 1804, vol. 7, p. 136.

## ATTACHMENT.

hands, power or possession, shall secure and make the whole liable in law, to answer any judgment that shall thereafter be recovered and awarded upon that process; and every sheriff, at the time of executing such writ of attachment, shall summon the person or persons, in whose hands the said monies, goods, chattels, debts, books of account, lands, tenements, hereditaments, or other real estates, shall be, by serving him, her or them, with a true copy of the said writ, with a notice thereto endorsed, requiring him, her or them, to appear before the justices of the said court of common pleas at the return thereof, to show cause why the said monies, goods, chattels, debts, books of account, lands, tenements or other real estates, should not be adjudged to belong to such absent debtor; but if no person is present at the time of attaching any of the aforesaid things, in such case the sheriff shall fix up, at the prison door, a copy of the said writ, with an account of the things attached, and give notice thereof in the gazette; and in case there shall be no gazette, shall publish the same at the door of the court house, where such court is usually holden, for any person or persons claiming the same, to appear and shew cause as aforesaid: and the person or persons so summoned, shall be obliged to appear at the return of the said writ, and to discover, upon oath, what sum or sums of money, goods, chattels, debts, books of account, lands, tenements or other real estate, he, she or they, have in his, her or their power, hands or possession, to which the said absent defendant hath any right, claim or property whatsoever; and if such person or persons, after being duly summoned as aforesaid, and proof thereof made to the court, shall neglect or refuse to appear at the return of the said writ, or at farthest, during the sitting of the court next after the return of the said writ; or if on appearing, shall refuse to discover, on oath, what monies, goods, chattels, debts, books of account, lands, tenements or other real estates, he, she or they have, in his, her, or their possession or power, belonging to such absent defendant, then the person or persons so summoned shall be condemned for default of appearing, or discovering upon oath, as the case may be, and judgment shall be given against him, her or them, and execution awarded against his, her or their proper goods and real estates, for payment and satisfaction of the debts attached for; the same being legally proved to the court: and if any goods, chattels, lands or other real estates, shall be actually seized and taken into custody by the sheriff, by virtue of such writ of attachment, and the persons so summoned shall not appear at the return of the writ, then upon his, her or their default, the same shall be adjudged and taken to be the property of the absent debtor; but if the person or persons so summoned, shall appear at the return of the said writ, and lay claim to the

## ATTACHMENT.

46

said monies or other things, and upon oath, deny the same to belong to the absent debtor; if the plaintiff shall rest satisfied therewith, then the said attachment shall be discharged; but if not, then the said claimant or claimants shall be put to plead the same, and the matter shall be forthwith tried by a jury, or at such court or time as may be appointed; and the party that shall be cast in the same, shall pay to the prevailing party such reasonable costs and charges as shall be allowed by the said court: (p) Provided always, that all attachments shall be replivable by appearance and putting in special bail, if by the court ruled so to do, or by giving bond with good security, to the sheriff or other officer serving the same; which bond the sheriff or other officer is empowered and required to take, to appear at the court to which such attachment shall be returnable, and to abide by and perform the order and judgment of such court.—(d.)

II. Upon the defendant's replaying any attached effects, by giving bond and security to any sheriff, or other officer, as aforesaid, the sheriff, or other officer, shall return the name or names of such security so by him taken; and if such security shall, upon motion, be adjudged insufficient by the court, and the defendant shall fail to appear and give special bail, if thereto ruled by the court, such sheriff and security shall be subject to the same judgment and recovery, and have the same liberty of defence and relief as if such defendant was legally present in court.—(g.)

III. It shall be lawful for any creditor to go before a justice of the peace for the district where his debtor resides, and make oath how much is justly due to him, and that he has just grounds to suspect, and verily believes, that such debtor intends to remove his effects; and thereupon such justice shall issue an attachment against the estate of such debtor, returnable to the next district court, and directed to all sheriffs within the state of South Carolina; and by virtue thereof, it shall be lawful, as well for the sheriff and his deputy, of the district wherein such attachment shall be obtained, as for the sheriffs and their deputies of other districts through which such debtor may be going with his effects, to pursue and seize such effects, and make return to the court of the district to which the said attachment shall be returnable; and thereupon such proceedings shall be had as in other cases of attachment.—(g.)

IV. Upon complaint made to a justice of the peace that any person indebted to the complainant in any sum not exceeding twenty dollars, in cases where a single magistrate has jurisdiction, is about to remove, or is removing out of the district

(p)—1744, P. L. p. 187. (d)—1785, P. L. p. 362.

(g)—1785, P. L. p. 368 & 441.

## ATTACHMENT.

privately, or so absconds, or conceals himself that a warrant or summons cannot be served upon him, it shall be lawful for such justice, taking bond and security in the manner hereinbefore directed in other cases of attachment, to grant an attachment against the estate of such debtor, or so much thereof as shall be sufficient to satisfy the debt and costs of the plaintiff, directed to the sheriff or some constable of his district, and returnable before himself or some other justice of the peace thereof, who shall and may proceed and determine thereupon, as to ~~justices~~ shall apportion.—(g.)

V. Every merchant, shopkeeper, factor, or other person concerned in trade, who shall abscond in such manner that mesne process or execution cannot be personally served upon him or her, by the space of three months, shall be deemed and adjudged to have departed the state; and all his or her goods, chattels, debts and books of account in the hands of any other persons or persons whomsoever, shall be subject and liable to be attached in the same manner as is directed with respect to debtors who shall withdraw themselves out of the limits of the state!—(h.)

VI. If any debtor shall abscond or conceal himself or herself so that mesne process or execution cannot be personally served on him or her, notice thereof shall, by order of court, be published in some gazette, or by writing, fixed up in the most conspicuous place in the district where such absconding debtor last resided, at the expense of the plaintiff in the action; after which it shall not be lawful for such debtor to sue for, collect or receive any debt whatsoever, which may be due to him or her, from any person whomsoever; and if any action shall have been commenced by such debtor, or judgment obtained at his or her suit, and not satisfied before he or she absconded, or concealed him or herself, the same shall be continued and carried on in his or her name, but shall, by order of court, be paid and applied to the use of his or her creditors; and in case any person having to any person so absconding, shall, at any time after publication having been given as aforesaid, pay any sum of money due to such debtor, to any other than his or her creditor, such person shall be liable and obliged to pay the same over again to the creditors of such debtor, which may be attached as moieties of such debtor in his or her hands.—(h.)

VII. It shall be lawful for any constable to seize and take property under attachment, provided the same does not exceed the sum of eighty-five dollars and seventy cents.—(m.)

VIII. Every justice of the peace, before granting an attachment, shall take bond and security of the party, for whom such attachment shall be issued, in double the sum to be attached,

(g)—1785, P. L. p. 668 and 441.

(m)—1788, P. L. p. 454.

(h)—1769, P. L. p. 252.

payable to the defendant, for satisfying and paying all costs that shall be awarded to the defendant, in case the plaintiff suing out the attachment therein mentioned, shall discontinue, or be cast in his suit; and also all damages which shall be recovered against the said plaintiff for his suing out such attachment; which bond shall be, by the said justice, returned to the court to which the attachment is returnable, and the party entitled to such costs and damages may bring suit and recover; and every attachment issued without such bond, or where no bond shall be returned as aforesaid, is hereby declared to be illegal and void, and shall be dismissed with costs.—(n.)

IX. In case any slave or slaves, cattle, horses or other goods or chattels, shall be attached, any one of the justices of the court of common pleas shall and may, upon reasonable application to him made, grant an order for the sale of such negroes, horses, cattle or other goods, the sheriff by whom the said negroes, cattle, horses, or other goods or chattels are sold, first giving public notice thereof by fixing up an advertisement, at the watch house in Charleston, and at the doors of the houses respectively, where the courts of judicature shall be usually held, at least twenty-one days before such sale; and the money arising therefrom shall be paid, either into court, or into the hands of the plaintiff, he or she giving security to return the same, in case he or she shall not obtain judgment against the defendant as aforesaid.—(a.)

X. Every person suing out a writ of attachment shall be obliged to file his or her declaration within two months after the return of the said writ, unless sufficient cause shall be shewn to the court for a longer time, and shall serve the wife or attorney of such absent debtor, if any or either is known to be in this state, with a copy of the said declaration, with a special order of court endorsed thereon, ordering the time when such absent debtor shall plead or make his defence in the said action; and the said justices shall have power to allow any time for the same, not exceeding a year and a day; and in case the said absent defendant shall have no wife or attorney known to be within this state, then notice shall be given in the gazette once every three months during the said year and day; and if such absent debtor shall not appear and make his defence within the year and a day from the filing of the declaration as aforesaid, then final and absolute judgment shall be forthwith given and awarded for the plaintiff in the attachment.—(b.)

XI. The monies, goods, chattels, debts, books of account, lands, tenements, or other things attached as aforesaid, shall, on filing the declaration, be immediately paid and delivered

## ATTACHMENT.

into the hands of the plaintiff, the said goods, chattels and other things being first inventoried and appraised, by two or more persons to be appointed by the court for that purpose, the plaintiff first entering into a recognizance, with security in double the value of the goods attached, to prosecute his or her suit with effect, and that the monies and the appraised value of the goods and chattels, lands and other things, shall be forthcoming in case the said absent debtor shall appear in court within the year and day as aforesaid, and discharge himself of the plaintiff's demand against him; and that if the said absent debtor shall not appear as aforesaid, then he or she will render and deliver into the hands of the clerk of the court, the residue of all such monies, goods, chattels, lands, or other things, after payment and satisfaction of such sums as shall be awarded him or her by the judgment of the said court; which said residue shall be subject to the order of the said court: (c) and the plaintiff, on filing his or her declaration as aforesaid, shall make oath to the debt or sum demanded, and that no part of the same is paid, and he doth not, in any wise, or on any account whatsoever, stand indebted to the defendant; and in case the plaintiff shall be indebted to the defendant, such sum shall be allowed and deducted out of the sum demanded; and in such case, a stated account shall be sworn to and filed with the said declaration. --(d.)

XII. The plaintiff in attachment, into whose hands any bonds, notes, or books of account shall be delivered as aforesaid, shall have full power and authority to sue for, recover and receive the same, in the name of the absent debtor, of and from all persons whomsoever, from whom such bonds and notes are due and payable, and who shall appear by such books of account to be indebted to such absent debtor; and shall have full power and authority to give sufficient receipts and discharges for all such sums of money, which he shall receive as due to the absent debtor; and such receipts and acquittances shall be final and absolute discharge to the parties making payment to the plaintiff, against the absent debtor, for the sums theretofore mentioned, as fully and absolutely as if done or given by the absent debtor himself; and the said plaintiff shall and may have and maintain, in the name of such absent debtor, any action or actions for the recovery of property, as well real as personal, or damages, (q) to be applied as hereinbefore directed, which such absent debtor would be entitled to, or might have or maintain, if he were personally present; and whatever the said plaintiff shall lawfully do, in pursuance of this power, shall be effectual to bind such absent debtor to all intents and purposes. --(g.)

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(c)—1744, P. L. p. 188. (d)—Ibid, p. 189. (q)—1783, P. L. p. 189.  
(g)—1784, P. L. p. 189.

XIII. In case an absent debtor or defendant, whose money, goods, chattels, debts, books of account, lands, tenements, or other property whatsoever, shall be attached in the hands of any person, be really and truly indebted to the person in whose hands such monies or other property may be attached; then such person, if his or her possession of the money or other property was obtained legally and *bona fide*, without any tortious act, (and not otherwise) shall be first allowed his or her own debt, he or she forthwith filing his or her declaration, and in every other respect proceeding as if he or she were plaintiff in the attachment.—(h.)

XIV. If at any time within the year and day, any person shall appear as attorney for the absent debtor, and will put in bail to answer the action, and pay the condemnation, in such case the attachment shall be dissolved, and the monies, goods and other things so attached, shall be forthwith paid and delivered to the person or persons so appearing and giving bail as aforesaid: And such person and his security shall be obliged to satisfy, and be liable to pay all such sums of money as the plaintiff in the attachment shall obtain judgment for against the absent debtor, together with all costs and charges.—(h.)

XV. In case any absent person, against whom an attachment is issued, shall appear within two years, and disprove the debt, duty or demand, which shall have been recovered against him, he shall recover against the plaintiff in attachment the full damages which he may have sustained for his unjust vexation, with triple costs of suit: Provided such person shall, at any time one month next before his departure, give notice in the gazette, and in case no gazette shall be printed, at the most public place in Charleston, and in the parish [or] district,\* where such person resides, that he is about to depart this state, and is ready to answer any suit that shall be brought against him; in such case the person or persons refusing to commence their suit while the party to defend was present and offered to answer the same as aforesaid, shall not have the benefit of this act, and attach the absent party's money, goods, chattels, debts, books of account, lands, tenements, &c. for any cause or cause of action that did arise before such notice given.—(h.)

XVI. If any attachment returnable to a district court, or before a justice of peace, shall be returned executed, and the goods or effects attached shall not be replevied as aforesaid, the subsequent proceedings thereupon shall be the same as on original process against the body of the defendant, where there is default of appearance, and all goods and effects attached and not replevied as aforesaid, shall, by order of the said court, be

(h)—1744, P. L. p. 129. \* Not in original.

## ATTORNEYS.

sold and disposed of, for and towards satisfaction of the plaintiff's judgment, in the same manner as if the same had been taken upon a writ of *scire facias*: And where any attachment shall be returned served in the hands of any third person, it shall be lawful, upon his or her appearance and examination in the manner hereinbefore directed, to enter upon judgment as against the original debtor, and award execution against every such third person, for such monies as may be due from him to the absconding debtor, or such effects as may be in the hands or keeping of the said third person, belonging to such debtor, or so much thereof as will be of value sufficient to satisfy the judgment and costs of the plaintiff in attachment.—(m.)

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## ATTORNIES.

**E**VERY person desirous of offering himself for admission to the bar of this state, shall apply by petition, to the court of common pleas for admission into that court, and to the court of equity for admission into that court, at Columbia or at Charleston, at any time during the sitting of the court to which he shall apply: and the judges, being satisfied by such proofs as they shall think proper to prescribe to the candidate, of his being duly qualified, according to the requisitions hereinafter contained, shall make and cause to be entered a rule for the examination of such candidate, prescribing the time and place, and nominating a competent number of the bar to attend and conduct such examination under the superintendance and direction of any two or more of the judges of the said court; at which time and place the said examination shall be had, and shall continue until the presiding judges shall see fit to terminate the same: And if the said judges shall be satisfied of the skill, learning, character and fitness of the candidate for admission into the said court, they shall cause the clerk to enter an order for that purpose, and to make out a commission under the seal of the court, which shall be signed by one or more of the said judges, and given to the candidate, whose name shall be enrolled amongst the attorneys, counsellors or solicitors of the said court, as the case may be, and shall be qualified in the usual form of qualifying officers in this state.—(h.)

**II.** Every person being a citizen of this state, who shall have attained the age of twenty-one years, and shall produce

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(m)—1785, P. L. p. 368. (h)—1796, 2d Faust, p. 89.

**satisfactory evidence of his morality and general good character, if the judges, to whom he shall apply for admission, shall deem him properly qualified, shall be admitted to practice in the several courts of law and equity in this state.—(m.)**

**III. It shall be the duty of the judges of the respective courts of law and equity, to see that the candidates for admission to practice, shall be examined rigidly upon the theory and practice of law, and the principles and practice of equity.—(n.)**

**IV. Every person so licensed or admitted as aforesaid, shall, at the time of his admission, take the oath of allegiance and fidelity to this state, and likewise the oath of an attorney; and if any person shall presume to act without having taken the said oaths, he shall forfeit and pay the sum of four hundred and twenty eight dollars and sixty cents, to be recovered by any informer, who shall sue for the same, by action of debt in any court of record having jurisdiction: Provided nevertheless, that any person who may have business depending in any of the courts of this state, shall be at liberty to plead in his own case, to put in his plea or answer at the proper office, or file his declaration, as the case may be; (b) or to plead or speak in behalf of another, with leave of the court first had and obtained, provided he declare on oath, if required, that he neither has nor will accept or take any fee, gratuity or reward, on account of his so pleading or speaking, or for any other matter relating to the said cause.—(c.)**

**V. The attorneys of the several district courts throughout this state, shall render a true and faithful account, and pay the clerks all fees by them received on their account, at least once in every six months; and shall, when called upon, once in six months, shew their dockets or some other full and true account of all suits ended, abated, compromised, settled or determined before judgment, or at court; and the said attorneys shall, on application of the clerks, furnish them with the names and places of abode of the real plaintiffs, or their agents, where the plaintiffs are out of this state.—(d.)**

**VI. If any attorney shall demand or take any greater fee in any action at law, or summons and petition, or for making defense in either of them, than is established by law, he shall forfeit and pay the sum of two hundred and fourteen dollars and forty-three cents, to be recovered by any informer who shall sue for the same, by action of debt, in any court of record having competent jurisdiction.—(g.)**

**VII. If any attorney or solicitor, be guilty of any manner of**

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(m)—1812, Sess. acts, p. 43—4. (b)—1785. P. L. p. 363. (c)—ibid, p. 216. (d)—1795, 2d Faust, p. 33. (g)—1795, 2d Faust, p. 263. Where the demand does not exceed £50, the penalty for taking more than the law allows, is £50. See Sess. acts, 1809, p. 33.

**BAIL.**

deceit or collusion, in any court of this state, or consent thereto, in deceit of the court, or to beguile the court or the party, and be thereof convicted, he shall be imprisoned a year and a day, and thenceforth shall not be heard to plead for any man; and if any such attorney be notoriously found in any default of record, or otherwise, he shall not, thereafter, be permitted to appear as an attorney or solicitor in any court of this state.—(h.)

VIII. All powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error made by any person whatsoever within this state, before action brought, shall be absolutely null and void: And if any attorney shall appear to confess judgment for any defendant in any court of record in this state, in consequence thereof, such attorney, for every such offence, shall forfeit and pay the sum of forty-two dollars and eighty-five cents, to be recovered by any person who will inform and sue for the same; and shall moreover be liable to an action for damages at the suit of the party grieved.—(o.)

**BAIL.**

No person arrested for manslaughter or felony, or suspicion of manslaughter or felony, being bailable by the law, shall be set to bail by any justice of the peace, unless two of the said justices, one whereof to be of the quorum, shall be present together at the time of such bailment; which bailment they shall certify in writing, subscribed and signed with their own hands, to the court of sessions next to be holden for the district, where the trial of such person shall be had.—(a.)

II. The said justices, or one of them, being of the quorum, when any person is brought before them for manslaughter or felony, before any bailment, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing: which examination, together with the said bailment, the said justices shall certify to the clerk of the court of sessions next to be holden within the limits of their commission, on or before the meeting thereof.—(a.)

III. It shall be the duty of the justices to bind all such as declare any thing material, to prove any murder or manslaughter,

(h)—P. L. p. 28 and 38. (o)—1784, P. L. p. 381.  
(a)—1712, P. L. p. 59.

offence or felony, or to prove any person to be accessory to the same, by recognizance to appear at the next court of sessions to be holden for the district, wher the trial thereof shall be, then and there to give evidence against the party so indicted, at the time of his trial: and to certify as well the said evidence, as such recognizance, in writing, as he shall take, to the clerk of the same court, at the time aforesaid.—(a.)

IV. If any justice of the peace offend in any thing, contrary to the true intent and meaning of this act, the justices of goal delivery of the district where such offence shall be committed, upon due proof thereof, by examination before them, shall, for every such offence, set such fine on such justice of the peace as they shall think meet, and shall estreat the same as other fines and amercements.—(b.)

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### BANK OF THE STATE OF SOUTH CAROLINA.

A bank shall be established in the name and on behalf of the state of South Carolina, in the manner, and on the conditions and limitations hereinafter expressed.—(c.)

II. The said bank is made a corporation and body politic, by the name and style of the President and Directors of the Bank of the State of South Carolina, and so shall continue until the first day of May, one thousand eight hundred and thirty-five; and by that name shall be capable in law, to have, purchase, receive, possess, enjoy and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of what kind, nature or quality soever; and the same to sell, grant, demise, alien, or dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever; and also to make, have and use a common seal, and the same to break, alter and renew at their pleasure; and also to ordain, establish, and put in execution such by-laws, ordinances and regulations, as shall seem necessary and convenient for the government of the said corporation, not being contrary to law or to the constitution thereof; and generally to do and execute all and singular such acts, matters and things, which to them it shall or may appertain to do; subject nevertheless to the rules, regulations, restrictions, limitations, and provisions in this act prescribed.—(d.)

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(a)—1712, P. L. p. 59. (b)—1712, P. L. p. 59:

(c)—1812, Sess. Acts, p. 47. (d)—1812, Sess. Acts, p. 51.

## BANK OF THE STATE

III. The legislature shall annually elect, by joint ballot of both branches, a president and twelve directors, to manage and conduct the business of the said bank, whose services shall commence on the first day of February next ensuing such election, and continue for one year.—(c.)

IV. The president and directors, for the time being, shall have power to elect and remove the cashier, and to appoint such officers, clerks and servants under them, as shall be necessary for executing the business of the said corporation, and allow them such compensation for their services as shall be reasonable. They shall receive money on deposit, and pay sway the same to order, free of expense, discount bills of exchange, accepted and payable within the state of South Carolina, and notes with two or more good names thereon, or secured by a deposit of bank or other public stock, at a rate of interest not exceeding one per cent. discount for sixty days; and shall also have power to make loans to citizens of this state, in the nature of discount on real or personal property secured by mortgage, and power of attorney to confess judgment, on default of payment; provided that the sum so loaned shall never exceed the one third part of the real unencumbered value of the property so mortgaged; and provided further, that the loan shall never be for a longer term than one year, nor draw a greater interest than at the rate of seven per cent. which shall always be paid in advance, and shall always be payable in the months of February or March next succeeding such loan, unless an earlier day be fixed by the borrower; and provided further, that no loan be, in any case whatever, renewed, unless the interest for the ensuing year be paid in advance; and provided further, that no individual be permitted to borrow, on his own account, on the security of real property, a greater sum than two thousand dollars.—(d.)

V. The president shall be elected for one year, and at the expiration of that term, shall be re-eligible; and shall be allowed, for his services, the sum of two thousand five hundred dollars per annum.—(g.)

VI. In case of vacancy, occasioned by the death, resignation, or removal out of the state, of any director, a majority of the directors shall fill up such vacancy, and the director so appointed, shall hold his office during the remainder of the term, which the director so dying, resigning, or removing out of the state, had to serve. And in case of the death, resignation, or removal out of the state, of the president, (unless such removal be temporary, and by permission of the board of directors) the directors shall appoint one of their own body president, who

(c)—Session Acts, p. 50, and Session Acts 1813, p. 34.

(d)—1812, Session Acts, p. 40. (g)—1812, Session Acts, p. 50.

shall serve till the next session of the legislature, when such vacancy shall be filled by joint ballot.—(h) And in all cases where the legislature shall omit or neglect to fill up the board of directors of the said bank, the directors appointed by such legislature, shall, with the president, fill up the vacancies thereby occasioned, in the manner they are now authorised to do, where vacancies occur by death or resignations; and if at any time the legislature should appoint any number of directors less than seven, the existing board of directors may appoint such number of directors as, with those appointed by the legislature, shall make up the number of seven, and these seven, with the president, shall appoint the remaining five directors; and where the legislature shall wholly omit, at any session, to appoint a president or directors, those then in office shall continue until a new appointment shall be made by the legislature.—(i.)

VII. Not less than five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which case his place may be supplied by any other director, whom he, by writing under his hand, shall nominate for the purpose; and in default of such nomination by the president, or in case of the sickness or necessary absence of the person so appointed, the board of directors may, by ballot, appoint a temporary president.—(h.)

VIII. No person, who is not a citizen of this state, or who is a director of any other bank, or co-partner of any such director, or comptroller-general, shall be eligible as president or director of this bank.—(h.)

IX. Every president and cashier, before he enters upon the execution of his duty, shall give bond with two or more securities, to the satisfaction of the directors, in a sum not less than twenty thousand dollars, conditioned for his good behaviour; and the tellers and clerks shall give security in a sum not less than five thousand dollars, nor more than fifteen thousand dollars.—(m.)

X. The president, directors, cashier, and all other servants and officers shall take the following oath, upon entering on the duties of their respective offices:

I —— do solemnly swear, that I will faithfully discharge the trust reposed in me as —— of the Bank of the State of South Carolina.—(m.)

XI. The directors shall keep fair and regular entries in a book to be provided for the purpose, of their proceedings; and on any question, when two directors shall require it, the yeas and nays of the directors voting shall be duly inserted in their

(h)—1812, Session Acts, p. 50. (i)—1815, Session Acts, p. 7.

(m)—Session Acts, p. 51.

## BANK OF THE STATE

minutes, and those minutes be, at all times on demand, produced to the legislature, or any committee thereof, who may be legally authorised to require the same.—(m.)

XII. The legislature of this state shall be furnished with a general statement of the transactions of the bank, signed by the cashier, and countersigned by the president, as often as they may require the same: and it shall also be the duty of the comptroller-general, to inspect each general account in the books of the bank, as often as he may please, and faithfully to report every violation of the fundamental rules of the corporation to the legislature: Provided, however, that nothing in this section shall imply a right of inspecting the account of any private individual or individuals, or of any body corporate or politic, with the bank.—(a.)

XIII. The total amount of the debts, which the said corporation shall, at any time owe, whether by bond, bill, note or contract, shall not exceed twice the amount of its capital, over and above the monies then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorised by a law of this state; and in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, or any of them, their, or any of their heirs, executors or administrators, in any court of this state having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant and agreement to the contrary notwithstanding: but this shall not be construed to exempt the said bank, or the lands, tenements, goods or chattels of the same, or, on their insufficiency, the state of South Carolina, from being liable for, and chargeable with, the said excess: provided however, that such of the said directors as may have been absent when the said excess was contracted or created, or may have dissented from the resolution or act, by which the same was contracted or created, may respectively exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller-general of the state.—(b.)

XIV. The principal bank established by this act, shall be fixed at Charleston, and the president and directors shall establish a bank at Columbia for the purposes of discount and deposit, and appoint the directors and officers of such branch, and fix their salaries, and prescribe their duties; and may allot

(m)—1812, Sess. Acts, p. 51. (a)—*Ibid.*, p. 56. (b)—*Ibid.*, p. 49.

to the said branch, any portion of the active capital of the said bank, as to them may seem advantageous, (c.) And the said president and directors shall make loans at Columbia, to the citizens of this state, on mortgage, in the same manner, on the same principles, term and conditions, and under the same rules and restrictions, as money is loaned from the said bank in Charleston on mortgage.—(q.) And whenever the said president and directors may deem it expedient, they shall establish a branch of the said bank at Georgetown, (b) and another branch thereof at Camden, (e) with the like powers and authorities, and in like manner as the branch established at Columbia.

XV. All the stock belonging to the state, of all descriptions whatsoever, whether six per cent. stock of the United States, three per cent. stock, loan office bonds, shares in the state bank, and in the Planter's and Mechanic's bank, and all bonds and notes due the state, shall constitute and form the capital of the said bank, and shall be vested in the president and directors, and their successors; and the faith of the state shall stand pledged for the support of the said bank, and to supply any deficiency in the funds specifically pledged, and to make good all losses arising from such deficiency.—(d.)

XVI. All the unexpended money in the treasuries of this state, and all the taxes to be hereafter collected on account of the state, shall be deposited in this bank, to aid and facilitate the operations of the same; subject nevertheless to all the drafts on the part of the state, authorised by legal appropriations.—(d.)

XVII. All the stock now in the possession of the state, which has been purchased to meet the claims of Streckhysen and Luxemburg against the state, shall be deposited in the said bank, and the interest be received by the bank, until the payment of the same to the creditors of the state be ordered by law.—(d.)

XVIII. Not only the treasurers, but also the tax collectors of the parishes of St. Philip and St. Michael, the sheriff of Charleston district, the prothonotary of the court of common pleas and general sessions, and the master in equity, shall, weekly or monthly, deposit for safe keeping, the public monies which they may respectively receive, in the said bank only, and on failure thereof, or on such person's depositing public monies in any other bank, he or they shall, respectively, forfeit for each offence, the sum of one thousand dollars, to be recovered as other penalties are by this act directed to be recovered.—(g.)

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(c)—1812, Sess. Acts, p. 53. (q)—1813, Sess. Acts, p. 35. (d)—1814, Sess. Acts, p. 47. (g)—Ibid, p. 58.  
 (b)—1818, Sess. Acts, p. 19. (e)—1818, Sess. Acts, p. 43.

## BANK OF THE STATE

**XIX.** It shall be the duty of the prothonotaries, or clerks of the court of common pleas and general sessions, the master and commissioners in equity, and the sheriffs of Charleston, Georgetown and Richland districts, on the first Monday in every month, to furnish, or cause to be furnished, to the board of directors of the Bank of the State, or the directors of the branch, where either of the said officers shall exercise his office, a statement in writing, of all the monies which they have received in their official capacity, with the names of the persons on whose account it has been received for the preceding month; and on failure thereof, he or they shall respectively, for each offence, forfeit the sum of one thousand dollars, to be recovered as other penalties are directed to be recovered by the act to establish the Bank of the State; (i) and it shall be the duty of the president of the mother bank in Charleston, and of the presidents of its branches, to direct the attorney-general or solicitor, to proceed according to law, against any officer or officers failing, refusing, or neglecting to make the statements and deposits which he or they are by law ordered to make.—(k.)

**XX.** All the interest which may be paid on the stock due this state by the United States, and now becoming a part of the capital of this bank, and all the dividend on the bank shares of the State Bank, and the Planter's and Mechanic's Bank, which this bank may hold, and all the interest arising from the loans and discounts, which may be made by this bank, after its necessary expenses shall have been paid, shall constitute, and be considered as a part of the annual revenue of this state, subject to the pleasure of the legislature: but whatever part of this sum shall, at any time, remain unexpended by the legislature, and all the principal, which shall be paid on the stock of the United States, and all sums arising from the sale of bank stock, shall be considered, and become a part of the capital stock of this bank.—(h.)

**XXI.** The president and directors of the said bank shall apply to the United States for stock of a transferable nature, in lieu of that which the state now holds.—(h.)

**XXII.** The said president and directors shall be authorised to sell out, at their discretion, any share or shares which the state now holds, or may hereafter hold in any bank within this state, or to negotiate foreign bills of exchange.—(l.)

**XXIII.** The treasurer of the lower division, under the direction of the comptroller-general, shall, at the instance of the president and directors, of the said bank, issue six per cent, stock on the credit of this state, and on the faith and credit of the stock of the United States, vested in them by this act, to an

(i)—Session Acts, 1817, p. 24.  
(b)—1812, Sess. Acts, p. 56.

(k)—1818, Sess. Acts, p. 24.

amount not exceeding three hundred thousand dollars, redeemable at the pleasure of the state; and it shall be their duty, from the quarterly and annual payments received on the aforesaid stock of the United States, to pay the holders of the present state debt, and the holders of the stock to be issued under the authority of this act, the quarterly interest due on the said stock: And shall, from the aforesaid quarterly and annual receipts on the said stock of the United States, apply such a sum annually towards the redemption of the present outstanding state debt, as shall, on or before the last day of December, one thousand eight hundred and twenty-four, finally redeem and extinguish the same; and the president and directors shall have power to sell and dispose of the said three hundred thousand dollars of six per cent. stock created under the authority of this act from time to time, for the purpose of increasing the capital of the bank hereby established, provided the same is not, at any time, sold under par.—(l.)

**XXIV.** The three per cent. stock of the state now outstanding, shall not be redeemed or paid off at a higher rate than fifty-five per cent. and the president and directors shall report annually, on the first day of October, to the comptroller, to be by him submitted to the legislature, the amount of the stock issued under the authority of this act, and the sums annually redeemed.—(m.)

**XXV.** For the purpose of erecting suitable buildings for the accommodation of the bank, any lot or square in the town of Columbia belonging to the state, and not heretofore appropriated, which the president and directors may deem suitable for this purpose, is hereby granted to, and vested in, the said corporation; and until such buildings shall be erected, the president and directors shall be authorised to use any part of the state house at Columbia, which may not be wanted for, or applied to, the immediate use of the state.—(m.)

**XXVI.** The president and directors shall have power to issue notes signed by the president and countersigned by the cashier, for such sums, and with such devices, as they may deem most expedient and safe; they shall also be capable of exercising such other powers and authorities as may be necessary for the well governing and ordering of the affairs of the said corporation, and of promoting its interest and credit.—(n.)

**XXVII.** The president and directors of the Bank of the State of South Carolina, are hereby authorised and required, to issue bills of a less denomination than one dollar, to be signed by a deputy cashier, to be appointed as hereinafter mentioned, and to be countersigned by either of the directors, or by some per-

(b)—1812, Sess. Acts, p. 56.

(m)—Ibid, p. 57.

(n)—Ibid, p. 52.

## BANK OF THE STATE

son appointed by them for that purpose; and the said president and directors shall, immediately after the passing of this act, elect a deputy cashier, whose duty it shall be to sign all bills of a less denomination than one dollar, to enter the same in the manner, and in conformity to the existing rules of the bank, relative to its issues, and to note the mutilated bills when cancelled by the president and directors; in addition to which, he shall perform all such other services as may be required; and shall receive such compensation as the president and directors may deem proper, and shall, before he enters upon the duties of his office, give bond with security, to be approved by them in the sum of ten thousand dollars.—(a.)

**XXVIII.** The bills obligatory, and of credit, under the seal of the said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereupon, under the hand or hands of such person or persons, and of his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and to enable such assignee or assignees, to bring and maintain an action thereupon, in his, her, or their own name or names: And bills or notes, which may be issued by order of the said corporation, signed by the president and countersigned by the principal cashier or treasurer thereof, promising the payment of money to any person or persons, his, her, or their order, or to bearer, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with the like force and effect, as upon any private person or persons, if issued by him, her or them, in his, her or their private or natural capacity, or capacities; and shall be assignable and negotiable in like manner, as if they were so issued by such private person or persons: That is to say, those which are or shall be payable to any person or persons, his, her or their order, shall be assignable by endorsement, in like manner and with the like effect, as foreign bills of exchange now are; and those which are or shall be payable to bearer, shall be negotiable and assignable by delivery only.—(a.)

**XXIX.** It shall be lawful for the president and cashier respectively, of the branches of the bank of the state of South Carolina, to sign all bills of credit payable on demand of a lower denomination than five dollars, under such regulations as the president and directors of the said bank may direct; and the president and cashier of the Bank of the State of South Carolina, are hereby exempted from signing the same.—(p.)

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(..)—1814, Sess. Acts, p. 29.      (a)—1812, Sess. Acts, p. 54.      (p)—1814, Sess. Acts, p. 25.

**XXX.** The bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of this state, either at **Charleston** or **Columbia**, and by all tax collectors and other public officers, in all payments for taxes, or other monies due to the state.—(b.)

**XXXI.** The sums of money loaned out on mortgage of real property shall be apportioned among the election districts throughout the state, in proportion to the number of representatives of the state legislature, in each election district; and wherever the sum allotted for any district cannot be loaned on good terms, to the inhabitants of such district, in a reasonable time, it shall then be loaned to the inhabitants of any other district, who may apply for the same.—(c.)

**XXXII.** All and every person or persons, who may apply to the president and directors of the **Bank of the State of South Carolina**, for any sum or sums upon loan, which is to be secured by any mortgage or mortgages, shall submit his, her or their titles to the lands intended to be mortgaged, to the inspection of the said board of directors, before the obtaining of such loan.—(d.)

**XXXIII.** The value of the property mortgaged under this act, shall be ascertained to the satisfaction of the president and directors, who shall be answerable to the state in an action at law, or suit in equity, wherein the damages incurred by taking insufficient security, shall be assessed by the jury, or by the decree of the court, unless the judges of law or equity, as the case may be, shall be of opinion, and certify that every necessary precaution was used, and no manner of neglect on the part of the president and directors: Provided nevertheless, that in order to secure the president and directors more effectually from imposition, any person or persons, who shall apply to them for monies on loan, shall produce a just and true account of the property proposed to be mortgaged, which said property shall be valued, upon oath, by commissioners hereinafter to be appointed.—(e.)

**XXXIV.** The president and directors shall have power to appoint five commissioners in each election district, to value and appraise the lands, which may be offered in mortgage to the bank: And every valuation of land in any election district shall be certified by three or more of the said commissioners, who shall receive, each, for his services, not exceeding one dollar per diem, to be paid by those who may borrow money from said bank. (o.) And the president and directors shall have the

(b)—1812, **Sess. Acts**, p. 58.

(c)—*Ibid.*, p. 54. (d)—*Ibid.*, p. 53.

(f)—*Ibid.*, p. 52.

(o)—1813, **Sess. Acts**, p. 33.

## BANK OF THE STATE

power to fill up all vacancies, or to remove any such commissioners at pleasure.—(h.)

XXXV. The mortgage shall be taken in the following form:  
I, \_\_\_\_\_ do assign over to the president and directors of the Bank of the State of South Carolina, my (*here describe the estate particularly,*) which estate I declare to be in mortgage for the payment of \$ \_\_\_\_\_ with the legal interest of seven per cent. per annum from the date hereof; and I do agree that the same may be exposed to sale according to an act to establish a bank in behalf of, and for the benefit of the state, if I do not repay the principal and interest, at the several and respective times at which they shall be lawfully due and payable. Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_. Which mortgage shall be accompanied with a bond for the sum so borrowed, and shall be valid to all intents and purposes.—(m.)

XXXVI. All mortgages taken for loans of money under this act, shall be considered as being recorded from the date thereof, and shall have priority of any mortgages of the same property not previously recorded in the proper offices.—(m.)

XXXVII. The directors for the time being shall call in one tenth of each loan in each year; and shall have it in their power to call in, in each year, one fourth part of the loans made on real and personal security, giving a notice of not less than sixty days, in some of the gazettes of the state: and all persons, who shall fail to make such payment, shall be deprived, in future, of credit in the said bank, and judgment shall immediately be entered up on the power of attorney given, as before required; and executions shall immediately be issued in the name, and on behalf of the bank, against such person or persons, for the whole amount of the debt, which may be due the said bank.

—(n.)

XXXVIII. In all cases, where the interest to become due under the provisions of this act, and the loans to be made in pursuance thereof, and in all cases, where the principal to be loaned under this act, or any part thereof, shall be in arrear, or due, the directors of the said bank shall be authorised, (if they shall so think fit,) to advertise the mortgaged property for three weeks, in one or more of the gazettes of Columbia or Charleston, and in the different districts where the mortgaged premises lie; and on the first Monday in March in each and every year, shall expose, or cause the same to be exposed by the sheriff, to sale, at the court houses of the respective districts, in which the mortgaged property may be, and sold to the highest bidder for cash: and the president and directors shall have power to make

(h)—1812, Sess. Acts, p. 59. (m)—Ibid, p. 53. (n)—1812, Sess. Acts, p. 42.

conveyances for the same to the purchasers thereof, or to buy the same in, if they shall think fit, for the benefit of the institution.—(o)

XXXIX. No director, officer, clerk, or servant of the said corporation shall be concerned, either directly or indirectly, in the practice of advancing, or loaning out monies at an illegal rate of interest, whether the same be done, or effected, under the form and colour of a purchase, or exchange of notes, acceptances, due bills, checks on banks, acknowledgments, or any other way or manner whatsoever; and every director, officer, clerk, or servant of this bank, who shall be concerned as aforesaid, in any such practices, shall, in addition to the usual penalties imposed by law, forfeit and pay for each offence, the sum of two thousand dollars, to be recovered by action of debt in any court of record in this state; one half to the use of the informer, and the other half to the use of the state, to be levied of the goods and chattels, and houses, lands, tenements, and other hereditaments and real estates of the person or persons so offending, if any he or they shall have, and on failure of any property to satisfy the said penalty, by a return of *nulla bona*, the person or persons so offending, shall and may be taken on execution, upon a *capias ad satisfacendum*; and being so taken, shall not be entitled to the benefit of any act made for the relief of insolvent debtors, until he or they shall have remained and been confined in prison for the term of six months at least; and any such person being convicted by the verdict of a jury, of any of the practices aforesaid, whether he be a director, officer or servant of this bank, shall, on motion of any director, be dismissed from the service of the said bank.—(a.)

XL. The persons who shall be approved, and joined as sureties in the bonds prescribed by this act, shall severally be held and deemed liable, each one for his equal part of the whole sum in which the bond is given, the said sum to be divided into as many equal parts as there shall be sureties in the bond, and no more: And such equal parts shall be, in any court, recoverable of and from any one of the said sureties, his heirs, executors or administrators: but nothing in this act contained shall operate to prevent the sureties from having and obtaining, amongst one another, just and equitable aid and contribution as in other cases of securityship, where there are several sureties.—(b.)

XLI. The directors, or a majority of them, shall be authorised, should they, at any time, deem it proper, to borrow, on the credit of the state, from any of the banks, or individuals, a sum not exceeding three hundred thousand dollars, for a period not exceeding, at any one time, ninety days: Provided that

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(o)—1812, Sess. Act, p. 59. (a)—Ibid, p. 55. (b)—Ibid, p. 59.

an interest not exceeding six per cent. per annum shall be allowed for the same.—(b.)

XLII. The comptroller shall transfer to the bank, on account of capital, all sums which may be received from the United States, on account of the principal of their debt; and all sums, which, though received nominally as interest, may operate to extinguish the principal of their debt; and shall also transfer to the said bank, on account of capital, on the second day of April in every year, all monies received in the course of the preceding year, and then remaining in the treasury.—(c.)

XLIII. All officers directed by the act establishing the Bank of the State of South Carolina, to deposit in said bank, the public monies, which they may respectively receive, shall, in like manner, deposit in the said bank, each and every sum of money which shall be received by them in virtue of their offices, either in suits actually depending, or in consequence of the decrees of the courts of law and equity in this state, or until the actual investment of such funds in cases where the courts of law and equity shall order sums of money to be invested in funds of a particular description: And the said officers shall deposit each and every sum, required to be deposited by them, under the provisions of this act, or of the act to which this is an amendment, in their names as public officers, distinctly from any deposit made by them in their own names, and on their own account, as private individuals, and specify the amount of each sum so deposited, and on what account such deposit is made.—(c.)

XLIV. The comptroller-general shall be furnished, as often as he may require, not exceeding once a month, with statements of the amount of the capital stock of the bank, and of the debts due to the same, of the monies deposited therein, of the notes in circulation, and of the cash in hand; and he shall, under the injunction of secrecy, have a right to inspect all the accounts and books of the bank: Provided that this right shall not be construed to imply a right of inspecting the account of any private individual or individuals with the bank. And the said comptroller-general shall make an annual report to the legislature on the subject of the bank; and if, in his opinion, the transactions of the bank, or any particular circumstance relating thereto, shall require it, he shall apply to the house for a select committee of three members to be appointed, who shall, under a like injunction of secrecy, take into consideration any matters relating to the said bank, submitted to them by the comptroller-general, and report thereon at their discretion, to the legislature.—(d.)

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(b)—1812, Sess. Acts, p. 69.      (c)—1812, Ibid, p. 33.      (d)—Ibid, p. 33.

**XLV.** A majority of the members present at any regular meeting of the directors of the said bank, may suspend any director with a view to his expulsion; and any member may be expelled at a meeting of the board of directors specially convened by the president for that purpose, as soon after such suspension takes place as may be practicable; but such expulsion shall not be made by a majority of less than two thirds of the whole number of directors.—(g.)

**XLVI.** No bank, other than the Bank of the State of South Carolina, shall issue, or put into circulation, bills of a lower denomination than five dollars.—(g.)

**XLVII.** The president, cashier, and all other officers of the Bank of the State of South Carolina, and the branches thereof, shall be exempted from the performance of ordinary militia duty, and from serving on juries.—(h.)

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### BASTARDY.

If any white woman be delivered of a bastard child, and shall, at any time after the birth thereof, voluntarily give information to some magistrate of the district or parish in which she resides; or shall be brought before such magistrate on the information, on oath, of any other person, that such child will become a burthen on such district or parish, and will declare on oath, who is the father of her child or children, the magistrate, before whom such declaration shall be made, shall issue a warrant to apprehend and bring before him, or some other magistrate, the person so accused, who shall be obliged to enter into a recognizance, with two good and sufficient sureties, in the penal sum of two hundred and fifty-seven dollars and fifteen cents, conditioned for the annual payment of twenty-one dollars and forty-three cents, for the maintenance of the child; or should the woman have more than one child at a birth, then forty-two dollars and eighty-five cents per annum for the maintenance of the said children until the age of twelve years, and to save harmless the district or parish: And should the person so accused, refuse to enter into such recognizance, he shall be committed to prison, there to remain until he shall enter into the stipulation hereinbefore required; but should he be unable to comply, or should he deny that he is the father of such child or children, then a jury shall be charged, either in the court of sessions or

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(g)—1813, Sec. acts, p. 24. (h)—Ibid, p. 36. See also Sec. acts, 1814, p. 37.

common pleas for the district in which the woman resides, to try the question, whether the person so accused, is or is not the father of such child or children: And should the jury be of opinion that he is not the father of such child or children, he shall be discharged; but should the jury be of opinion, that the charge is well founded, and that he is the father of such child or children, then should he not give the security before required, the court shall bind him out to service any time not exceeding four years, and the proceeds of his labor shall be applied by the court to the purposes aforesaid.—(a.)

II. If any woman, charged with having a bastard child or children, and brought before a magistrate, shall refuse to declare on oath, who is the father thereof, such magistrate shall commit her to gaol, there to remain, until she shall declare the same, or shall give security that the said bastard child or children shall not become chargeable to the district or parish, wherein she resides.—(b.)

III. Whenever it shall so happen that neither the father nor mother of a bastard child shall be able to support and maintain the same, the commissioners of the poor shall take care to assess and levy, upon the inhabitants of the district or parish, such reasonable rates and sums, on the principles of the general tax, as may be sufficient to maintain and educate such child or children: And the said commissioners shall lay before the district courts, once in every year, a statement of their proceedings and accounts in the execution of this law; and they shall have full power to superintend the application of all monies paid, or secured to be paid, for the maintenance and education of bastard children, and to put out and bind, as apprentices, at the proper age, such bastards to suitable trades or occupations.—(b.)

IV. If any person who is an inhabitant of this state, or hath an estate therein, shall have already begotten, or shall hereafter beget, any bastard child, or shall live in adultery, such person having a wife or lawful children living, and shall give, settle, or convey, either in trust or by direct conveyance, by deed or gift, legacy, devise, or by any other way or mean whatsoever, for the use and benefit of the woman with whom he may so live in adultery, or of his bastard child or children, any larger or greater proportion of the clear value of his estate, real or personal, after payment of his debts, than one fourth part thereof, such deed of gift, legacy, devise or other conveyance, made or to be made, shall be null and void for so much of the amount or value thereof, as shall exceed such fourth part of his real and personal estate.—(c.)

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(a)—1795, 2d Faust, p. 74. (b)—Ibid, p. 75. (c)—Ibid, p. 76.

## BOATS AND CANOES.

EVERY person who shall steal, take away or let loose any boat, perrigua or canoe, or steal or take away any grapping, painter, rope, sail, or oar, from any landing, or other place whatsoever, where the owner, or person in whose service or employ they were last, had made fast or laid the same, (except all boats or canoes that may be let loose from other boats, canoes, or vessels,) shall be liable, if the matter of fact be felony or larceny, to corporal punishment, or to such fine as the justices of the court of sessions shall, in their discretion, think proper to inflict, and make good to the person or persons injured, the damages they shall sustain: and if the matter of fact be a trespass only, the person or persons committing the offence shall make good to the party injured all damages thereby sustained; and shall, moreover, forfeit and pay, for every such offence, the sum of seventeen dollars and ten cents; one moiety thereof to be paid to the treasurer for the use of the state, and the other moiety, with costs, to him or them that will sue for the same.—(b.)

II. If any slave or Indian shall, at any time, take away or let loose any boat or canoe, or steal any grapping, painter, rope, sail or oars, from any landing or other place whatsoever, where the owner or person whose service or employment they were last in, had made fast or laid the same, such offender shall, upon conviction, for the first offence, receive on his or her bare back, thirty-nine lashes, and for the second offence, shall forfeit and have one ear cut off: and upon complaint made to any justice or justices of the peace, of any offence committed by any negro or Indian as aforesaid, if the offender be a slave, such proceedings shall be had as are directed in other cases for the trial of slaves charged with offences not capital.—(b.)

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## BONDS, NOTES, AND BILLS OF EXCHANGE.

THE assignee or assignees of any bond, note or bill, although the same be not payable to order, or negotiable, may bring an action of debt, or any other legal action, for the recovery of the same, in his, her, or their own name or names, styling himself, herself or themselves, in the writ to be issued, the assignee or assignees, of the obligee or obligees, in such bond, or of the payee or payees of such note or bill: Provided nevertheless, that nothing herein contained shall preclude any defendant in

## BONDS, NOTES, AND

such action from the advantage of any discounts or defence, which he or she would have been entitled to, had the action been brought in the name of the obligee or obligees of such bond, or the payee or payees of such note or bill.—(h.)

II. All notes in writing, which shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant or trader, who is usually entrusted by him, her or them, to sign such promissory notes for him, her or them, whereby such person or persons, body politic or corporate, his, her or their servant or agent, as aforesaid, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body politic or corporate, to whom the same is made payable: And every such note shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be, according to the custom of merchants; and the person or persons, body politic or corporate, to whom such sum of money is or shall be, by such note, made payable, may maintain an action for the same, in such manner as he, she or they might do upon any inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politic or corporate, who, or whose servant or agent as aforesaid, signed the same; and any person or persons, body politic or corporate, to whom such note is endorsed or assigned, or the money therein mentioned, ordered to be paid by endorsement thereon, may maintain his, her or their action for such sum of money, either against the person or persons, body politic or corporate, who, or whose servant or agent as aforesaid, signed such note, or against any of the persons who endorsed the same, in like manner as in cases of inland bills of exchange; and in every such action, the plaintiff or plaintiffs shall receive his, her or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs of suit against the plaintiff or plaintiffs; and every such plaintiff or defendant respectively, recovering, may sue out execution for such damages and costs.—(m.)

(h)—1798, 2d Faust, p. 215. (m)—1712, P. L. p. 23.

A lapse of twenty years from the time mentioned in the condition of a bond affords such a presumption of payment as will bar an action by obligee, where no interest has been paid, and there is no other circumstance to negative the presumption of payment. A shorter period, when accompanied by other circumstances, from which payment can be inferred, may be left to a jury. E. Haskell and C. B. Cochran, survivors, vs. Keen and Hart. 2 Nott & McCord, p. 160, and note (a) *ibid* 166.

**III.** If upon presenting any inland bill of exchange, the party on whom the same shall be drawn, shall refuse to accept the same, the party to whom the said bill is made payable, his servant, agent or assignee, shall cause the same to be protested for non-acceptance, as in case of foreign bills of exchange.—(m.)

**IV.** Provided that no acceptance of any such inland bill of exchange shall be sufficient to charge any person whomsoever, unless the same be underwritten or endorsed in writing thereupon; and if such bill be not so accepted, no drawer of any such inland bill shall be liable to pay any costs, damages or interest thereon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest, the same be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing at the place of his or her usual abode: And if such bill be accepted and not paid before the expiration of three days after the same shall become due and payable, then no drawer of such bill shall be compelled to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given in manner above mentioned: But every drawer of such bill shall, nevertheless, be liable to make payment of damages, cost and interest, if the same be protested either for non-acceptance or non-payment thereof, and notice thereof be sent, given or left as aforesaid.—(g.)

**V.** No protest shall be necessary, either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of eighty-five dollars and seventy cents, or upwards.—(m.)

**VI.** If any person accept any such bill of exchange for and in satisfaction of any former debt, the same shall be accounted and esteemed a full and complete payment of such debt, if the person accepting such bill shall not take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and make his protest as aforesaid, either for non-acceptance, or non-payment.—(m.)

**VII.** Where any bill of exchange shall be drawn for the payment of money, for value received, and such bill shall be protested for non-acceptance, or non payment, the same shall carry interest from the time such bill shall become due and payable, after the rate of seven per cent. per annum, until the money therein drawn for, together with damages and costs, be fully satisfied and paid.—(a.)

(m)—1712, P. L. p. 93  
D. 408.

(g)—Ibid, p. 54. (a)—1786, P. L.

## CATAWBA INDIANS.

**VIII.** Every person having a right to demand a sum of money upon any protested bill of exchange, may commence and prosecute an action for principal, damages and interest against the drawers or endorsers jointly, or against either of them separately, and judgment shall be given for such principal, damages and interest as aforesaid, and all creditors on protested bills of exchange, where the drawers or endorsers shall be dead, shall be upon an equality with bond creditors.—(a.)

**IX.** On all bills of exchange drawn upon persons resident within the United States, and out of this state, and returned protested, the damages shall be ten per cent. on the sum drawn so; And on all bills drawn on persons resident in any other part of North America, or within any of the West India islands, and protested, the damages shall be twelve and a half per cent. and on all bills drawn on persons resident in any other part of the world, and protested, the damages shall be fifteen per cent. on the sums mentioned in such bills respectively, and all charges incidental thereto, with lawful interest, as aforesaid, until the same be paid.—(a.)

**X.** In every action, which may be commenced for the recovery of money upon any bill of exchange, or any debt due and made payable in any other country, wherein the plaintiff shall recover, the jury shall be authorised to find a verdict, with such difference of exchange as shall be just, and agreeable to the true difference thereof.—(a.)

## CATAWBA INDIANS.

It shall be lawful for the Catawba Indians to grant and make to any person or persons, any lease or leases for life or lives, or term of years, of any of the lands vested in them by the laws of this state: Provided that no lease shall exceed the term of ninety-nine years, or three lives in being.—(m.)

**II.** The governor for the time being shall appoint five fit and proper persons to superintend the leasing of the lands of the Catawba Indians in manner aforesaid; and no lease of the said lands hereafter to be made, shall be held or deemed valid or good in law, unless the same be witnessed by a majority of the said superintendants, at the time of the making thereof, and signed and sealed by at least four of the headmen or chiefs of

## CHAMPETRY AND CONSPIRACY.

71

The said Indians: Provided that an annual rent be reserved as a compensation for such lease.—(m.)

III. The said superintendents shall be commissioned for seven years, and their commission shall be recorded in the office of the secretary of state; and an office copy thereof shall be taken and received as good evidence in any court of law or equity in this state, as the original would be, if produced in any case wherein it might be necessary to produce such original commission.—(m.)

IV. No payments shall hereafter be made for such lease, or any part thereof, for more than seven years' rent in advance; and no payment shall be deemed valid, unless a receipt therefor be given and attested by one of the said superintendents.—(p.)

V. A lease for three lives, or ninety-nine years of the said Catawba lands, shall be a qualification equivalent to a freehold, in all cases where a freehold is (<sup>t</sup>) required by the constitution of this state, or of the United States.—(p.)

VI. The superintendents aforesaid, or a majority of them, shall be authorised in their own names, or in the names of a majority of them as agents, to commence and prosecute an action or actions, of trespass to try titles to the lands claimed by, and vested in, the said Indians, that are now or may hereafter be held in possession by any person or persons, without a lease from the head men or chiefs of the said nation of Indians executed agreeably to law; and also in like manner, an action or actions of *quare clausum fregit*, for trespasses committed on the said land, and also actions for injuries done to the personal property of the said Indians; and the damages recovered in any action to try titles, or in any action of *quare clausum fregit*, or action for injury done to the personal property of the said Indians, shall be collected by the said superintendents for the benefit of the said Indians.

VII. The said superintendents, or a majority of them, shall have power in the same manner, as they are authorised to bring actions, to make distress for arrearages of rent, or bring an action or actions to recover the same, in any court having jurisdiction.—(q.)

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## CHAMPERTY AND CONSPIRACY.

Those persons shall be deemed chamesters who move pleas and suits, or cause them to be moved by their own procurement,

(m)—1808, Sess. Acts, p. 72. (p)—1812, Sess. Acts, p. 45.

(<sup>t</sup>)—Not, between is and required, in original roll.

(q)—1815, Sess. Acts, p. 74.

## CHURCH.

or by others, and sue them at their own proper costs and charges, to have a part of the lands in variance, or a part of the gains: And upon conviction thereof by the verdict of a jury, such offender shall be fined at the discretion of the court, and suffer three years' imprisonment; and shall moreover forfeit to the state the value of the gains so taken or given: But this penalty shall not extend to counsel, parents or next friends.—(b.)

II. Conspirators are those persons who do confederate and bind themselves by oath, covenant or other alliance, that each of them shall aid and bear out the other, falsely and maliciously to move or cause to be moved, an indictment or information against another, on the part of the state, or do retain men with fees, &c. to maintain their malicious enterprises; and those who shall be convicted thereof, as well the employer as the person employed, shall be punished with fine and imprisonment at the discretion of the court.—(c.)

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## CHURCH.

EVERY person liable to bear arms in the militia of this state, either in times of alarm or at common musters, resorting to any church, or other place of divine worship, except in Charleston, shall carry with him a gun, or pair of horse pistols, in good order and fit for service, with at least six charges of gunpowder and ball; and every person failing so to do, shall forfeit and pay the sum of sixty cents for every such failure or neglect, one half thereof to the commissioners of the poor, for the use of the poor, where the offence shall be committed, and the other half to the informer; to be recovered, on oath, before any justice of the peace in this state.—(d.)

II. The church wardens of the respective parishes, and the deacons and elders, or either of them, resorting to other places of divine worship in this state, except Charleston, who shall be at any such church, or other place of divine worship as aforesaid, where any person liable to bear arms as aforesaid, shall come and resort without his gun or horse pistols and ammunition, and wilfully neglecting, after having notice of the offence, to inform against such offender, in order to recover the penalty, within twenty days after the offence committed, shall forfeit and pay, for every such wilful neglect, to any person who will inform for the same, within five days next after the expiration of the said twenty days, the sum of sixty cents for every person so offending, to be recovered as aforesaid.—(d.)

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(b)—1712, P. L. p. 30, 31. (c)—Ibid. (d)—1743, P. L. p. 188.

III. In case any person liable to bear arms as aforesaid, being at any church or other place of divine worship as aforesaid, shall refuse or neglect, on demand of the said church wardens, deacons or elders, or of either of them, and in case none such shall be present, then on demand of any militia officer of this state, to produce and shew his gun or pair of horse pistols, and ammunition required to be brought as aforesaid, to the intent that it may be known whether the same be fit for immediate use and service, such person shall, for every such offence, forfeit and pay the sum of sixty cents, to be recovered and applied as aforesaid.—(a.)

## FOREIGN COINS.

All gold and silver coins of the following weight and denominations, shall pass current, and be received in payment as a tender in law in this state, at the following value of one hundred cents to a Spanish milled dollar, and at the following relative value to each other; that is to say:

A Spanish milled dollar,	Dwt. Grs.	\$ 1 00
Johannes,	18	16 00
Half ditto,	9	8 00
Quarter ditto,	4 12	4 00
Eighth ditto,	2 6	2 00
Moidore,	6 16	6 00
Half ditto,	3 8	3 00
Quarter ditto,	1 16	1 50
Eighth ditto,	20	75
Spanish Doubloon,	17	15 00
Double Pistole,	8 12	7 50
Pistole,	4 6	3 75
Half Pistole,	2 3	1 87 5
English Guinea,	5 7	4 66 5
Half ditto,	2 16	2 33 3
Quarter ditto,	1 7	1 16 5
French crown of 4 to the Louis d'or,		1 7
English Crown,		1 7
Pistareen,		19 8
German piece,	6 6	5 00
Half ditto,	3 3	2 50
Ducat,	2 5	2—(b.)

(a)—1743, P. L. p. 186. (b)—1783, P. L. p. 314.

## COMMON LAW.

**II.** Any person who shall counterfeit or utter, or attempt to pass, knowing them to be counterfeit, any of the aforesaid gold or silver coins, or shall make, or keep in his or her possession, any stamp, die or mould, for coining, the same, upon being duly convicted thereof, shall be judged guilty of felony, and suffer death as a felon, without benefit of clergy.—(a.)

**III.** If any person or persons whosoever, shall wilfully clip, file, or otherwise diminish the weight or value of the gold or silver coin passing by authority of the general assembly, within this state, or shall cause the same to be clipped, filed or diminished, such person or persons shall, on conviction thereof, before the justices of any of the courts of sessions within this state, suffer, for every offence, twelve months close imprisonment, and during that period, shall stand twice in the pillory, for one hour each time.—(b.)

## COMMON LAW.

**EVERY** part of the Common Law of England, where the same is not inconsistent with the particular constitutions, laws and customs of this state, shall be of full force theron.—(g.)

—(a)—1783, P. L. p. 314. After the first day of July next, foreign gold and silver coins shall pass current as money within the United States, and be a legal tender for the payment of all debts and demands, at the several and respective ratio following, and not otherwise, viz: The gold coins of Great Britain and Portugal, of their present standard, at the rate of one hundred cents for every twenty-seven grains of the actual weight thereof; the gold coins of France, Spain, and the dominions of Spain, of their present standard, at the rate of one hundred cents for every twenty-seven grains and two-fifths of a grain, of the actual weight thereof. Spanish milled dollars, at the rate of one hundred cents for each dollar, the actual weight whereof shall not be less than seventeen penny weights and seven grains; and in proportion for the parts of a dollar.—Crowns of France, at the rate of one hundred and ten cents for each crown, the actual weight whereof shall not be less than eighteen penny weights and seven grains; and in proportion for the parts of a crown. But no foreign coin issued subsequent to the first day of January, 1792, shall be a tender as aforesaid, until samples thereof shall have been found by assay at the mint of the United States, to be conformable to the respective standards required, and proclamation theron shall have been made by the President of the United States.—L. U. S. 1793, v. 1, p. 164.

—(b)—1783, P. L. p. 308.      (g)—1759, P. L. p. 99.

## COMPTROLLER.

I. There shall be a comptroller of the treasury, whose duty it shall be to superintend, adjust, and settle all the accounts of the treasurers and tax collectors of this state, to superintend the collection of the revenue, and the settlement, adjustment and preservation of the public accounts, to direct and superintend prosecutions for all delinquencies of officers employed in the collection of the public revenue, and the enforcement of all executions issued for arrearages of taxes, and suits for any debts that may be due to the state: And he shall decide on the official forms of all papers relating to the collection of the public revenue, and determine on the proper means to be adopted for the safe keeping thereof, and the manner and form of keeping the accounts of persons employed therein: He shall also prepare and report, at every session of the legislature, estimates of the public revenue and expenditure, and at the same time, render fair and accurate copies of all the treasurer's monthly reports, and a true and accurate account of the actual state of each department of the treasury: And the books of the treasurers of this state shall, at all seasonable times, be open to the inspection and examination of the said comptroller; as shall also the books and accounts of all other persons concerned in the collection and safe keeping of any of the public monies or funds of this state:—(b.) And the comptroller for the time being, shall be authorised, whenever he may think proper, to have access to, for examination, all the books and accounts of the Bank of the State, excepting the personal ledger or book in which the deposits of individuals are entered.—(c.)

II. The comptroller shall prepare, and at an early period of each successive session of the legislature, present to them a correct and detailed statement of the taxes, both real and personal, for which each of the election districts throughout this state shall be liable under any tax act.—(d.)

III. It shall be the duty of the comptroller to draw either general or special warrants upon the treasury, when he shall be thereto required, for all monies of whatever amount, which by law are directed to be paid out of the treasury of this state: And no sum shall be paid out of the treasury, without such general or special warrant; which warrants shall express on what particular account such money is due from the state: And the treasurers, after making a proper entry of each warrant, shall keep the same regularly filed in their respective offices; and it shall

(b)—1801, 2d Frost, p. 422. (c)—1817, Sess. Acts, p. 25.

(d)—1808, Sess. Acts, p. 40.

## COMPTROLLER.

be the duty of the comptroller to take a receipt and copy for every warrant so issued by him, and to keep the same regularly entered and filed in his office.—(d.)

IV. The comptroller shall perform the duties of the commissioner of public accounts, as heretofore performed by the treasurer at Charleston, and all other duties prescribed or to be enjoined by any future act of the legislature.—(e.)

V. All accounts against the state shall be transmitted to one of the treasurers, who shall send them to the comptroller, on or before the first day of October in every year; and it shall be the duty of the comptroller to examine the said accounts, and transmit them to the legislature with his report, as soon as may be, after the commencement of their session.—(g.)

VI. It shall be the duty of the comptroller to examine and compare the returns from the different parishes, counties or districts; and whenever he shall have reason, upon such examination, to believe that the lands in any parishes, counties or districts, are not fully and fairly returned, he shall immediately give notice thereof to the tax collector of such parish, county or district, and direct an immediate enquiry to be made therein: And in case it shall appear to him that the said tax collector hath been wilfully concerned in the making of a false return or returns, the said comptroller shall, by warrant under his hand and seal, commit such tax collector to the common gaol of the district wherein he resides, there to remain without bail or mainprize, until he shall have rendered, upon oath, to be taken before a justice of the peace, a full and satisfactory account of, and shall have paid all such sums as may be due for lands not returned by him as aforesaid, during the time he was collector; and shall have given in to the commissioners of the treasury an account of all monies received by him, or which are or shall be due to the state, by virtue of any tax act whatever, and the reasonable charges of such commitment.—(h.)

VII. In case any sheriff shall fail or neglect to make return to the comptroller-general, of all executions for taxes lodged with him by the tax collector of his district, within ninety days after receiving the same, it shall be the duty of the said comptroller-general to cause such defaulting sheriff to be debited in the books of the treasury, with the full amount of his receipt, and such sheriff shall not afterwards be entitled to a credit for any executions returned by him after the expiration of the said ninety days, although such executions should be returned nulla bona or non est inventus.—(i.)

(d)—1801, 2d Faust, p. 424—5. Comptroller's warrant dispensed with in all cases, except appropriations for internal improvements, and appropriations expressly ordered to be paid under his direction. See Sess. Acts, p. 5, 1818.

(e)—1801, 2d Faust, p. 424—5. (g)—Ibid, p. 425. (h)—Ibid, p. 426 and P. L. p. 433. (i)—1814, Sess. Acts, p. 11—12.

**VIII.** The comptroller-general shall annually publish in the Carolina Gazette, a list of such commissioners and clerks as have neglected to make their returns as by law required, for the preceding year: And provided the said commissioners and clerks do not make their returns on or before the first day of September after such publication, it shall be the duty of the attorney-general or solicitor, as the case may be, to sue for and recover the penalty to which they have been declared liable, except the commissioners of St. Philip and St. Michael, who shall account to the city council of Charleston as heretofore.—(b.)

**IX.** Whenever the public exigency shall, in the opinion of the comptroller, require that any sum of money which may be in the treasury in Charleston, shall be removed to the treasury in Columbia, and vice versa, it shall be his duty to cause a transfer or transportation and removal of such sum or sums to and from one treasury office to the other, in such manner as he shall deem most proper and convenient; and he shall have power to call upon his excellency the governor of the state for an order, and upon application the governor shall grant an order, for an escort and guard sufficient for the safe keeping and protecting, during the transportation thereof, of such sum or sums, from one office of the treasury to the other.—(m.)

**X.** It shall be the duty of the comptroller, twice in every year, and at such other times as he shall deem necessary, to examine the cash in the treasury, at Charleston and Columbia. He shall personally superintend, unless disabled by sickness, the transfer of money and papers from the office of the treasurers to their successors, and report thereon to the legislature at their next session.—(n.)

**XI.** The comptroller shall reside, during the sitting of the legislature, at Columbia.—(n.)

**XII.** The comptroller shall keep a book or books, in which he shall register all the aggregates of taxable property of every description in this state, and for that purpose shall be authorised to claim and receive all tax returns, which may be in the possession of the treasurers, or of the clerk of the house of representatives, and to keep the same in his office.—(a.) And the books necessary for the office of comptroller general shall be paid for out of the treasury of the state.—(c.)

**XIII.** The comptroller shall publicly call on the several boards of commissioners of public buildings, [and commissioners of Columbia (o)] and boards of commissioners for clearing, opening, and rendering navigable the several rivers and creeks in this state, to render an account to him, on oath, of the appli-

(b)—1814, Sess. Acts, p. 13.

(m)—1801, 2d Faust, p. 429.

(n)—1801, 2d Faust, p. 424.

(s)—1779, 2d Faust, p. 295—6.

(c)—1818, Session Acts, p. 6.

(o)—1802, 2d. Faust, p. 489.

## COMPTROLLER.

cation of such monies as are appropriated for the erection of public buildings, or the clearing, opening, and rendering navigable of the rivers and creeks as aforesaid, and the accounts so rendered shall be laid before the legislature annually.—(b.) He shall also annually call on the treasurer of the city council of Charleston, to render an account, on oath, of the application of such monies as are appropriated for the transient poor and for other purposes, and lay the account so rendered before the legislature.—(a.)

XIV. The comptroller shall render annually to the legislature a full account of his transactions.—(c.)

XV. The right of imparlance, in suits brought or prosecuted by the comptroller, by virtue of his office, in behalf of the state, against any person or persons, who have neglected to account for public monies received by them, shall be taken away.—(d.)

XVI. The said comptroller shall be elected by both branches of the legislature of this state; shall be commissioned by the governor for the time being, shall commence the duties of his office on the first day of March next ensuing his election, and shall continue in office for two years from that time, and receive for his services an annual salary of two thousand five hundred dollars.—(g.)

XVII. He shall keep open and attend in his office, from nine o'clock in the morning until two in the afternoon, every day, (Sundays, the fourth of July, Christmas, and the two next succeeding days excepted.)—(e.)

XVIII. The said comptroller shall, before he enters upon the duties of his office, give bond for the faithful discharge thereof, with one or more sureties, to be approved by the governor for the time being, in the sum of thirty thousand dollars.—(g.)

XIX. No former treasurer, whose accounts have not been settled under the inspection of the comptroller, shall be eligible to the office of comptroller.—(h.)

XX. The comptroller-general for the time being, shall not be a director, nor hold any office of trust or profit in or under any bank whatsoever.—(m.)

(b)—1810, Session Acts, p. 14. (a)—1812, Sess. Acts, p. 12.

(c)—1802, 2d Faust, p. 497. (d)—1801, 2 Faust, p. 423.

(g.)—1801, 2d Faust, p. 425. (e)—Ibid, p. 428. (b)—Ibid, p. 428.

(m)—1813, Session Acts, p. 35.

## CONVEYANCES.

No conveyance of lands, tenements, or hereditaments, within this state, shall pass, alter or change from one person to another, any estate of inheritance in fee simple, or any estate for life or lives; nor shall any greater or higher estate be made or take effect in any person or persons, or any use thereof, to be made by bargain or sale, lease or release, or other instrument, unless the same be made in writing, signed, sealed, and recorded in the office of the register of mesne conveyances of the district (o) where the land mentioned to be passed or granted shall be, in manner following, that is to say: if the person or persons, who shall make and seal such instrument of writing, shall be resident within the state at the time of making, signing and sealing the same, then the recording thereof shall be within six months from the signing, sealing and delivery; and if the person or persons so making, signing and sealing, shall be resident in any other of the United States at the time aforesaid, then the recording shall be within twelve months, and if without the limits of the United States, then the recording shall be within two years: and if any deed or other conveyance shall not be recorded within the respective periods before mentioned, such deed or other conveyance shall be legal and valid only as to the parties themselves and their heirs; but shall be void, and incapable of barring the right of persons claiming as creditors, or under subsequent purchases recorded in the manner hereinbefore prescribed. And no such deed or conveyance whatsoever of real estate, shall be admitted to record, unless the same be acknowledged by the grantor before a judge of the supreme court, or proven by the oath of one witness, before a magistrate, who shall swear that the deed was duly and legally executed, and attested by one witness, at the least, besides himself.—(d.)

H. The following form or purport of a release shall, to all intents and purposes, be valid and effectual to convey from one person to another, the fee simple of any land or real estate, if the same be executed in the presence of, and subscribed by, two or more creditable witnesses:

### THE STATE OF SOUTH CAROLINA.

Knew all men by these presents, That I,            of  
in the state aforesaid, in consideration of \$            to me paid by

(o)—2d Faast, p. 318—A. D. 1799, Dec. 21. (d)—1785, P. L. p. 381 and 432  
—By an act of Assembly of the 13th of March 1789, the time for recording was  
extended to the end of 12 months from that date—. P. L. 485.

## CONVEYANCES.

of - have granted, bargained, sold, released, and by these presents do grant, bargain, sell and release unto the said all that (here describe the premises,) together with all and singular the rights, members, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining: To have and to hold all and singular the premises above mentioned, unto the said his heirs and assigns forever: And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular the said premises unto the said his heirs and assigns, against myself and my heirs, and against every person whomsoever, lawfully claiming or to claim the same, or any part thereof: Witness, &c. Provided that no person shall be obliged to insert the clause of warranty, or be restrained from inserting any other clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and that the forms heretofore in use in this state shall not be invalidated.—(g.)

III. The wife of any grantor conveying real estate, in the manner above prescribed, may, if she be of lawful age, release, renounce and bar herself of her dower in all the premises so conveyed, by going before any judge of the common pleas, or justice of the quorum, and acknowledging before him, upon private and separate examination, that she did freely and voluntarily, without any compulsion, dread or fear of any person whomsoever, renounce and release her dower to the grantee and his heirs and assigns, in the premises mentioned in such deed: Provided that a certificate under the hand of the woman, and the hand and seal of the judge or justice as aforesaid; shall be endorsed upon such release, or a separate instrument of writing to the same effect, in the form or to the purport hereinafter following, and be recorded in the office of conveyances in the district where the land lies:

*The State of South Carolina,*  
District. }

I one of the judges of (or justice of the quorum) do hereby certify unto all whom it may concern, that the wife of the within named did, this day, appear before me, and upon being privately and separately examined before me, did declare, that she did freely and voluntarily, without any compulsion, dread or fear of any person or persons whomsoever renounce, release and forever relinquish unto the within named his heirs and assigns, all her interest and estates; and also all her right and claim of dower, of, in and to all and air-

cular the premises within mentioned and released: Given un-  
der my hand and seal, this      day of      &c.—(b.)

(L. s.)      Judge, &c.      (Woman's name.)

**IV.** Every married woman of the age of twenty-one years, who may be entitled to any real estate as her inheritance, and may be desirous of joining her husband in conveying the same or part of the same to any other person, may bar herself of her inheritance in such real estate, by joining with her husband in a release to the purport of the one herein before described, provided she will go before some one of the judges or justices, as herein before mentioned, at any time after the expiration of seven days after such release has been duly executed as aforesaid; and will then, upon a private and separate examination, declare to him that she did, at least seven days before such examination, actually join her husband in executing such release, and did then, and at the time of her examination, still does freely and voluntarily, without any manner of compulsion, dread or fear of any person or persons whomsoever, renounce, release, and for ever relinquish all her estate, interest and inheritance in the premises mentioned in the release, unto the grantee, his heirs and assigns: And provided also, that a certificate signed by the woman, and under the hand and seal of the judge or justice as aforesaid, shall then be immediately endorsed upon the said release, or a separate instrument in writing to the same effect, in the form and to the purport of the certificate prescribed in the third section of this chapter: To which certificate an addition to the following effect shall invariably be made, to wit: That the woman did declare, that the release was positively and bona fide executed at least seven days before such her examination: And such renunciation shall not be considered as complete or legal, until the same shall be recorded in the office of mesne conveyances in the district where the land lies.—(m.)

**V.** All grants and conveyances of the reversions or remainders of any lands shall be good and effectual, without attorneyment of the tenants paying rent for the same; but no such tenant shall suffer damage by the payment of any rent to the grantor, before notice shall have been given him of such grant or conveyance.—(n.)

**VI.** No grant for lands within the limits of this state shall be impeached, or declared void, by reason that such grant shall not have the great seal of the state affixed thereto; but such grant being in all other respects fairly and regularly completed and authenticated, altho' the great seal of the state shall not be affixed thereto, shall be deemed good and legal evidence of a grant.—(d.)

(b)—1795, Faust, p. 6.  
(n)—1721, P. L. p. 95.

(m)—1795, Faust, p. 6.  
(d)—1721, P. L. p. 117.

## CORONER.

VII. No grant, deed of conveyance and sale, deed of gift, or other conveyance of lands or tenements whatsoever, shall be impeached, or set aside by any court of law or equity, for want of attornment, or of livery and seisin, or recording thereof, or because such conveyance hath been made by way of assignment, endorsed on such grant or deed, without other ceremony, nor for any defect in the form, or in the manner, of the execution of such grant or deed, or of the indorsement or assignment thereof, either in the first grant, or any of the mesne conveyances derived therefrom, so that the right were, or would have been in the person conveying, if such defect had not happened in the form of such grant, deed, or other conveyance, or in the manner of the execution of the same as aforesaid.—(g.)

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## CORONER.

**E**VERY coroner, before he enters upon the duties of his office, shall, for his due and faithful performance thereof, take the following oath before any two justices of quorum of the district for which such coroner shall have been appointed: that is to say, "you swear (or affirm) that you will well and truly serve the State of South-Carolina, in the office of coroner, and as one of the coroners of      district, and therein you will truly and diligently accomplish every thing appertaining to your office, after the best of your knowledge and power, for the profit and good of the inhabitants within the said district, taking such fees as you ought by law to take, and no more—so help you God."—(d.)

II. When any coroner shall be certified of the dead body of any person, supposed to have come to a violent and untimely death, found or lying within his district, or precinct, he shall forthwith make out his warrant, directed to all or any of the constables of the district or precinct, where the dead body lies, requiring and commanding them, without delay, to summon as many free white men of the age of twenty-one years, or upwards, as well bystanders as others, who may be convenient, whether freeholders or not, as shall be necessary to constitute a jury of twelve good and lawful men, to appear before him at such time and place as shall be expressed in his said warrant.—And every constable, to whom such warrant shall be directed or given, who shall fail to do the duty thereby required of him, and make due return thereof, shall forfeit and pay the sum of ten

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(g)—1732, P. L. p. 182.      (d)—1706, P. L. p. 9—see also 2d Faust, p. 32.

## CORONER.

23

dollars, without reasonable excuse for the same be made to, and allowed by the said coroner and a justice of the peace.—(g.)

**III.** Every person summoned to attend and serve as a juror on any coroner's inquest, who shall refuse or neglect to attend, and serve (if required,) shall forfeit and pay the sum of ten dollars, unless he shall make a sufficient excuse for the same, whenever thereto required by the said coroner.—(g.)

**IV.** The coroner shall swear twelve or more of the jurors that appear, and give the foreman, by him to be appointed, his oath, upon view of the body, in this form, viz: "You shall enquire, and true presentment make, in behalf of the State of South-Carolina, how and in what manner A. B. here lying dead, came to his death; and you shall deliver up to me a true verdict thereof according to such evidence as shall be given you, and the best of your knowledge: So help you God;"—And then shall swear the rest of the jurors by three or four at once, in this form, viz: "All such oath as the foreman of this inquest, for his part, hath taken, you and each of you shall well and truly observe and keep on your parts: So help you God."—(h.)

**V.** The jury being sworn, the coroner shall give them a charge, upon oath, to declare of the death of the person, whether he died of felony, or by mischance and accident; and, if of felony, whether of his own, or another's, and, if by mischance or misfortune, whether by the act of God, or of man; and if he died of another's felony, who are principals, and who are accessories, who threatened him of his life or members, with what instrument he was struck or wounded, and so of all prevailing circumstances, that can come by presumption: And if by mischance or accident, by the act of God or man, whether by hurt, fall, stroke, drowning, or otherwise; to enquire of the persons, who were present, the finders of the body, his relations, or neighbors, whether he was killed in the same place, or elsewhere, by whom, and how he was there brought, and of all other circumstances: And if he died of his own felony, then to enquire of the manner, means, and instrument, and circumstances concurring. And the jury being charged, they must stand together, and let proclamation be made, for any, that can give evidence, to draw near, and they shall be heard.—(h.)

**VI.** Every coroner shall send out his warrant for witnesses, commanding them to come and be examined before him, and to declare their knowledge concerning the matter in question; and every person summoned, or warned, to be a witness, who shall fail to appear accordingly, shall forfeit the sum of eight dollars and fifty five cents, unless a reasonable excuse for the same be made unto, and allowed by, the said coroner and next justice of

(g)—1798, 2d Faust, p. 150 and 216. (h)—1706, P. L. p. 9.

the peace; And if the evidence be not ready, the coroner may adjourn until another day and place to receive their evidence, binding the jury by a recognizance of twenty-one dollars and fifty cents, for their appearance; and to such witnesses, as do appear, the coroner shall administer an oath in this form, viz: "All such evidence, as you shall give to this inquest concerning the death of      here lying dead, shall be the truth, the whole truth, and nothing but the truth: So help you God." The examination of such witnesses to be taken in writing under their hands; and if their evidence relate to the trial of any person concerned in the death of the party found dead, then shall the coroner bind over such witness by recognizance in a reasonable sum, not less than eighty-five dollars and seventy cents a piece, personally to appear at the next court of sessions for the district, then and there to testify their knowledge concerning the death of the said      : And the jury having viewed the body, heard the evidence, and made what inquiry they could into the manner and causes of the death of the person, they shall draw up, and deliver unto the coroner, their verdict thereupon, in writing, under their hands and seals in manner following, that is to say: An inquisition indentured, taken at      in the district of      the      day of      in the year      before gent. coronor of the said district, upon view of the body of then and there lying dead, by the oaths of (names of jurors,) good and lawful men of the district aforesaid, who, being charged and sworn to enquire for the state, when and by what means, and how the said      came to his death, upon their oaths do say, (then insert how, where, at what time, by what means, with what instrument, and in what manner the person was killed or came to his death,): And if it appears that the person was killed or murdered by another, that is known, the inquisition must be concluded after this manner: And so the jurors aforesaid, upon their oaths aforesaid, say, that a certain      in manner and form aforesaid, the said      then and there feloniously did kill and murder, against the peace and dignity of this state. In testimony whereof, as well the coroner aforesaid as the jurors aforesaid in this inquisition, have interchangably put their hands and seals, the day and year first aforesaid.—(m.)

VII. The coroner shall make return of all such inquisitions taken before him, to the next court of sessions to be holden for the district; and upon any verdict found of the death of a person by the felony or misfortune of another, he shall speedily inform one, or more, of the next justices of the peace of the district, to the intent that such person killing, or being any way instrumental to the death of another, may be apprehended, examined, and secured, in order to a trial.—(m.)

VIII. In case any person shall bury, or cause to be buried, any person supposed to have come to a violent and untimely death, before timely notice is given to the coroner to view the body, and to make inquiry into the cause and manner of the death, as herein before directed, the person so offending shall forfeit the sum of twenty-one dollars and forty-five cents; and the coroner shall order the body so buried to be taken up, in order to his making inquiry into the cause and manner of the death of the person so buried: And in case the body hath been so long deceased, or damaged by ill keeping, or lain so long buried, that it cannot be known how it came to its death, the coroner shall make a record of the same, together with the names of the persons who buried, or caused to be buried, the dead body, and shall return the same into the next court of sessions to be held for the district; that so the persons offending by burying the dead body without first sending for the coroner to view the same, may be fined by the said court, over and above the forfeiture aforesaid.—(n.)

IX. If any person shall be bit by a rattle-snake, and die suddenly of such bite, such death shall be deemed violent and untimely, and the coroner shall have a view of such body, and make inquiry thereof, as of any other body, that may come to a violent, or casual death.—(a.)

X. Every coroner, in the district for which he is appointed, shall serve and execute all manner of process to him directed, wherein the sheriff, who should have executed the same, shall be interested; and shall have the like fees for serving such process, as is allowed to sheriffs.—(a.)

XI. If there be no coroner within twenty miles of the body found, the inquest may be made, and the fees taken, by any justice of the peace, in like manner, who shall in that case, have all the powers of the coroner.—(b.)

XII. The coroners shall, respectively, be entitled to, and receive, for an inquisition by jury taken, or view of a dead person, and return, to be paid by the state, the sum of eight dollars and fifty cents, and, for other services, the same fees, as are payable to sheriffs for the same services.—(b.)

XIII. All the fines and forfeitures mentioned in this chapter, not exceeding the sum of eight dollars and fifty-five cents, shall be recovered by warrant from any justice of the peace; and being recovered, the same shall be paid into the public Treasury; and all fines and forfeitures exceeding that sum shall be recovered by the coroner of the district, or any other person, by action of debt, bill or plaint, in any court of record in this state; wherein no privilege, injunction, or stay of prosecution shall be

(n)—1706, P. L. p. 10. (a)—1706, P. L. p. 11. (b)—1791, 1st Faust, p. 14.

## CORONERS.

allowed; one half to go to the informer, and the other half to be paid into the public treasury.—(c.)

XIV. If any action shall be commenced against any person, for what he shall do in pursuance of the directions and requisitions herein contained, he shall be at liberty to plead the general issue of not guilty, and upon issue joined, to give the law and the special matter in evidence: and if the plaintiff, or prosecutor, shall become nonsuit, or suffer a discontinuance, or a verdict pass against him, the defendant shall recover triple costs.—(c.)

XV. Whenever any vacancy shall happen in the office of coroner for any of the circuit court districts of this state, the same shall be filled by a joint resolution of the Senate and House of Representatives, in the same manner as justices of the peace and quorum are now appointed.—(n.)

XVI. Whenever any vacancy shall occur in the said office by death, resignation, or otherwise, during the recess of the legislature, the same shall be filled by the appointment of the governor and commander in chief, which appointment shall continue until the end of the next session of the Legislature, and until a successor shall be appointed.

XVII. Every coroner shall, before entering upon the duties of his office, give bond with sufficient security to the State of South Carolina, in the sum of two thousand dollars, except the coroner for Charleston district, who shall give bond in three thousand dollars, for the faithful discharge of the duties of his office, which bond shall be lodged, after being approved of, as sheriffs' bonds are, in the office of the treasurer of the upper or lower division.

XVIII. All coroners appointed by the Legislature shall continue in office for four years, and until a successor shall be appointed, and enter upon the duties of his office.

XIX. It shall be the duty of the Governor, whenever a person appointed to the office of coroner, shall have given bond, as hereinbefore directed, to commission such person according to the provisions of this act.

XX. No coroner shall act as gaoler, or deputy sheriff, or hold any appointment under the sheriff of the district; and, in case any coroner shall accept any appointment from the sheriff of his district, his office of coroner shall be vacated and the Governor may fill the vacancy upon application; and the appointment so made by the Executive shall continue in force, until another appointment shall be made by the legislature.

XXI. The several coroners shall have the power to commit the prisoners in their custody to the common gaols of the several districts respectively; and all power necessary to carry this provision into effect is hereby given to the said coroners.—(n.)

(c)—1706, P. L. p. 11.

(n)—Sess. acts, 1821, p. 22.

## CORPORATIONS.

All bodies corporate, by any suit, bill or plaint, in any court of this state, may sue for, recover, and receive from their respective members, all arrears, or other debts, dues and demands, which may be owing to them, in like manner, as they may sue for, recover, and receive the same from any indifferent person not of their body.—(g.)

II. No body politic, or corporate, within this state, shall be allowed to issue any bills of credit, in the nature of circulating medium, or other than such as answer the purpose of contracts, under the penalty of ten dollars for each and every dollar issued: Provided nevertheless, that this clause shall not be so construed as to affect the chartered rights of any banking institution within this state, heretofore incorporated.—(a.)

## CRIMES AND MISDEMEANORS.

If any man do ravish a woman, married, maid, or other, where she did not consent before, or after; or shall ravish a woman, married, maid, or other, with force, although she consent after, the person so offending shall be adjudged a felon, and suffer death without the benefit of clergy.—(c.)

II. If any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, he shall, upon conviction, suffer death without the benefit of clergy.—(c.)

III. If any person shall be duly convicted of any manner of petit treason, or any wilful murder of malice prepense, such person so convicted, shall suffer death without the benefit of clergy.—(d.)

IV. If any person shall be legally convicted of robbing any church, chapel, or other holy place, of any article above the value of twenty-one cents, such offender shall suffer death without the benefit of clergy.—(d.)

V. Every person, who shall be duly convicted of robbing any other person, or persons, in any part or parts of their dwelling houses, or dwelling places, or in any other place within the precincts of such dwelling house, the owner or dweller, in the same house, his wife, children, or servants then being within, whether waking or sleeping, of any articles above the value of twenty-one cents, shall suffer death without the benefit of clergy.—(e.)

(g)—1712, R. L. p. 28. (a)—1814, *Benn.* Acts, p. 21. (c)—1798, P. L. p. 30—68. (d)—*Ibid.* p. 46.—accessories before the fact, punished in same manner.—*Ibid.* p. 60. (e)—1722, 1st Faust, p. 232.

VI. Every person convicted of robbing any other person in any booth or tent, fair, or market, the owner, his wife, children, or servant, being within the same booth, or tent, of any article above the value of twenty-one cents, shall suffer death, without the benefit of clergy.—(h.)

VII. Every person duly convicted of robbing another person in, or near, any highway, shall suffer death without the benefit of clergy.—(g.)

VIII. If any person shall be duly convicted of burglary, such person shall suffer death, without the benefit of clergy.—(m.)

IX. If any person shall be duly convicted of feloniously taking away, in the day time, of any money, goods, or chattel of the value of one dollar and seven cents, or upwards, from within any dwelling house, or any part thereof, or any out house, although no person shall be in such dwelling house, or out house, at the time of such felony committed, such offender shall suffer death, without the benefit of clergy.—(n.)

X. If any person shall be lawfully convicted of maliciously, unlawfully, willingly, and secretly burning, or causing to be burned, or of cutting, or causing to be cut, or destroyed, any frame, or frames of timber of any other persons' or persons', made and prepared for or towards the making of any house or houses, so that the same shall not be fit for the purpose, for which it was prepared, such offender so convicted shall suffer death.—(a.)

XI. Every person who shall be lawfully convicted of the felonious taking of any money, goods, or chattels, from the person of any other, privily without his knowledge, in any place whatsoever, shall be adjudged a felon, and suffer death without the benefit of clergy.—(b.)

XII. Every person who shall stab, or thrust any other person, that hath not any weapon then drawn, or that hath not then first stricken the party so stabbing, or thrusting, so that the person so stabbed, or thrust, shall thereof die within the space of six months then next following, although it cannot be proved that the same was done with malice aforethought, being therefore lawfully convicted, shall suffer death, without the benefit of clergy.—(c.)

XIII. If any person shall, on purpose, and of malice aforethought, and by lying in wait, unlawfully cut out, or disable the tongue, put out an eye, slit the nose, cut off a nose, or lips, or cut off, or disable any limb or member of any other person, with intent to maim and disfigure such person, such offender, his counsellors, aiders, and abettors, knowing of, and privy to,

(h)—P. L. p. 46.

(g)—1712, P. L. p. 58.

(m)—1712, P. L. p. 68.

(n)—P. L. p. 72.

(a)—ibid, p. 56.

(b)—ibid, p. 68.

(c)—ibid, p. 72.

the said offence, shall be deemed felons, and upon due conviction thereof, shall suffer death, without the benefit of clergy.—(d.)

XIV. All wilful killing, by poisoning, of any person, or persons, shall be adjudged wilful murder of malice prepense; and the offenders therein, their aides, abettors, procurers, and counsellors shall, on conviction, suffer death, without the benefit of clergy.—(g.)

XV. If any person shall rob any other person, or shall feloniously take away any goods, or chattels, being in any dwelling house, the owner, or any other person being therein, and put in fear; or shall rob any dwelling house in the day time, any person being therein; or shall comfort, aid, abet, assist, counsel, hire, or command any person, or persons, to commit any of the said offences; or to break any dwelling-house, shop or warehouse thereunto belonging, or therewith used in the day time, and feloniously take away any money, goods, or chattel, of the value of one dollar and seven cents, or upwards; therein being, although no person shall be within such dwelling-house, shop, or warehouse; or shall counsel, hire, or command any person to commit any burglary, such person being thereof convicted, shall suffer death, without the benefit of clergy.—(h.)

XVI. If any person shall steal, or take by robbery, any bond, warrant, bill, or promissory note, for the payment, or securing the payment of money, being the property of any other person, or persons, or of any corporation, it shall be deemed and construed to be felony of the same nature, and in the same degree, and with, or without, the benefit of clergy, in the same manner, as, it would have been, if the offender had stolen, or taken by robbery, any other goods of like value, with the money due on such bill, bond, warrant, or note, or secured thereby, and remaining unsatisfied: and such offender shall suffer such punishment as he or she should have done, if he, or she, had stolen other goods of the like value.—(m.)

XVII. If any person shall take away from any lodging hired to him, or her, with an intent to steal, embezzle, or purloin, any chattel, bedding, or furniture, which, by contract or agreement, he, or she, is to use, or shall be let to him, or her, to use, in, or with such lodging, such taking, embezzelling, or purloining, shall be adjudged to be larceny and felony, and the offender shall suffer as in case of felony.—(n.)

XVIII. If any person shall receive, or buy any goods, or chattels, that shall be feloniously taken or stolen from any other person, knowing the same to be stolen; or shall receive, harbor, or conceal any burglars, felons, or thieves, knowing them to be so, such person shall be taken and received as accessory to the

(d)—P. L. p. 79. (g)—Ibid, p. 57. (h)—Ibid, p. 86.

(m)—Ibid, p. 148. (n)—Ibid, p. 86.

felony, or felonies; and being of either of the said offences lawfully convicted, by the testimony of one or more credible witnesses, shall suffer and incur the pains of death, as a felon convict: Provided always, that if any such principal felon, who shall commit any burglary, or felony, as aforesaid, cannot be taken, so as to be prosecuted and convicted for any such offence, it shall nevertheless be lawful to prosecute and punish every such person buying, or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor; to be punished by fine, public whipping, and standing in the pillory, although the principal felon be not before convicted of the said felony; which shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted.—(a.)

XIX. If any person in this state shall marry a second, or other, husband or wife, during the life of a former husband or wife, such offender shall be adjudged guilty of felony, and shall suffer death; and the party so offending shall receive such and the like proceeding, trial, and execution in the district, where such person shall be apprehended, as if the offence had been committed in such district: Provided always, that nothing herein contained shall extend to any person, whose husband or wife, shall absent him, or her self, the one from the other, for the space of seven years together, the one of them not knowing the other to be living within that time; nor to any person, that shall be, at the time of such marriage, divorced by any lawful authority, from such former husband, or wife; nor to any person whose former marriage shall be, by the sentence of any court having competent jurisdiction, declared to be void, and of no effect, nor to any person whose former marriage was bad or made within age of consent.—(a.)

XX. If any person do commit the abominable and detestable crime of buggery, with man or beast, the party so offending shall be adjudged to be a felon, and shall suffer death.—(b.)

XXI. Every person indicted and found guilty of stealing a horse, mare, gelding, colt, filly, mule or ass, shall be adjudged guilty of felony, and shall suffer death, without the benefit of clergy.—(c.)

XXII. Every person who shall inveigle, steal, or carry away any negro, or other slave, or slaves; or shall hire, aid, or counsel any person, to inveigle, steal, or carry away any such slave, so that the owner or employer of such slave shall be deprived of the use and benefit of such slave; or shall aid any such slave in running away, or departing from his master's, or employer's service, shall be adjudged guilty of felony; and being thereto convicted by verdict or confession; or being thereof indicted, shall stand mute, or not answer directly to the indictment, or

(a)—P. L. p. 73. (b)—Ibid, p. 65. (c)—Ibid, p. 496.

~~fore~~ or ~~temporil~~ challenge aboye twenty of the jury, shall suffer death as a felon, without the benefit of clergy.—(d.)

**XXIII.** Every person who shall be directly, or indirectly, concerned or connected with any slave, or slaves, in a state of actual insurrection within this state; or who shall, in any manner, or to any extent, excite, counsel, advise, induce, aid, comfort or assist any slave, or slaves, to raise, or attempt to raise an insurrection within this state, by furnishing them with any written, or other passport, with any arms, or ammunition, or munitions of war; or knowing of their assembling for any purpose tending to treason, or insurrection, shall afford to them shelter or protection; or shall permit his, or her, house, or houses, to be resorted to by any slave, or slaves, for any purposes tending to treason, or insurrection, as aforesaid, shall on conviction thereof, in any court having competent jurisdiction, by confession in open court, or by the testimony of two witnesses, be adjudged guilty of treason against the state, and suffer death, without the benefit of clergy.—(g.)

**XXIV.** If any person shall, within this state, falsely make, forge, or counterfeit, or cause, or procure to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging or counterfeiting of any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money, or delivery of goods, bank note for payment of money, of any incorporated or unincorporated bank, or company, within this state, or any of the United States; or any indorsement or assignment of any bill of exchange, or promissory note for payment of money; or of any bank note for payment of money of any incorporated or unincorporated bank, or company, within this state, or any of the United States; or any acquittance or receipt for either money, or goods; or acceptance of a ~~bill~~ bill of exchange; or the number, or principal sum of any promissory note, or bank note, for the payment of money of any incorporated, or unincorporated bank, or company in this state, or in any of the United States; or the number, or principal sum of any accountable receipt for any note, bill, or other security or payment of money; or any warrant, or order for payment of money, or delivery of goods; with intention to defraud any person, or persons, residing, or being, within this state, or any of the United States, or any bank, or company incorporated or unincorporated, within this state, or any of the United States, or the president, or any other officer of any such bank, or company; then every such person being thereof convicted according to the due course of law, shall be deemed guilty of felony, and suffer death without the benefit of clergy.—(h.)

**XXV.** If any person shall, within this state, utter or publish,

(d) — P. L. p. 256. (g) — 1805, Sess. Acts, p. 49. (h) — 1801, 2d Faust, p. 279.

as true, any false, forged or counterfeited deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money or delivery of goods, bank note for payment of money, of any incorporated or unincorporated bank, or company within this state, or any of the United States; or any indorsement or assignment of any bill of exchange, or promissory note for payment of money; or of any bank note for payment of money, of any incorporated or unincorporated bank, or company within this state, or any of the United States; or any acquittance or receipt, either for money, or goods; or any acceptance of any bill of exchange; or the number or principal sum of any accountable receipt for any promissory note, or bank note, for payment of money, of any incorporated or unincorporated bank, or company within this state, or any of the United States; or the number or principal sum of any accountable receipt, note, bill, or other security for payment of money; or any warrant, or order for payment of money; or delivery of goods; with intention to defraud any person, or persons residing and being within this state, or any of the United States, or any bank, or company, incorporated or unincorporated within this state, or any of the United States, or the president, or any other officer of any such bank, or company; such person so uttering the same, as aforesaid, knowing the same to be false, forged or counterfeited, and being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death, without the benefit of clergy.—(m.)

XXVI. If any person shall falsely make, forge, counterfeit, alter, change, deface, or erase, or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased, any of the records of this state, or any plat, or plats of land, which is, are, or shall be annexed and referred to in any grant or grants of land in this state, or which shall be lodged, entered, or enrolled in the office of the secretary of state, or surveyor general, or any other office for the keeping of records in this state; or shall willingly act or assist in the premises, being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death, without the benefit of clergy.—(n.)

XXVII. If any person shall alter, erase, or counterfeit any note, or manifest of tobacco, given by any inspector of tobacco, within this state, or shall utter, in payment or barter, any such note, or manifest, knowing the same to be counterfeit, such person, on conviction, shall suffer death, without the benefit of clergy.—(o.)

XXVIII. If any person shall forge, or counterfeit any hawker's, pedlar's, or petty chapman's license, or travel with such

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(m)—1801, 2d Term, p. 380. (n)—P. L. p. 143. (o)—Ibid, p. 484.

forged, or counterfeited license, for the purpose of exposing to sale any goods, wares, or merchandize, or with a license granted to any other person than to him or herself, such person shall forfeit the sum of two hundred and forty dollars; one moiety to go to the state, and the other moiety to him that shall sue for the same; to be recovered by action of debt, bill or plaint, in any court of record in this state, and shall be subject to fine, pillory, and imprisonment, at the discretion of the court.—(b.)

**XXIX.** Every servant, or other person forging any servant's certificate of freedom, shall, upon conviction thereof, suffer such corporal punishment, by standing in the pillor, or otherwise, not extending to life or member, as the court before which such person shall be convicted, shall direct.—(c.)

**XXX.** Any person who shall write, or publish any inflammatory writing, or words, or deliver, publicly, any inflammatory discourse tending to alienate the affection, or seduce the fidelity of any slave, or slaves in this state, shall, on conviction thereof, in any competent court, by confession in open court, or by the testimony of two witnesses, be adjudged guilty of a high misdemeanor, and suffer such punishment, not extending to life, or limb, as may be adjudged by the judge or judges presiding in the court, before whom such trial shall be had.—(d.)

**XXXI.** All persons accused of writing, publishing, or speaking the writing, words, or discourses hereby interdicted, shall be indicted thereof in any court having competent jurisdiction; in which indictment, the writing, words, or discourse published, held, or made, shall be plainly and distinctly set forth and charged; and the finding of such indictment by the grand jury shall be held and taken in law, that the words so charged are under the provisions of the foregoing section, of a seditious and treasonable nature, so as to authorize the arraignment, trial, and conviction of the person, or persons accused: Provided always nevertheless, that the person or persons so accused shall be entitled to all the benefits and advantages of others accused of treason, so far only as extends to the production of evidence and right of challenge; but not so far as to plead, that the offence for which he, or she, may be indicted, is not therein and thereby sufficiently and explicitly set forth. —(d.)

**XXXII.** Every person who breaketh prison, shall have judgment of life or member only in cases where the offence, for which such person was taken and imprisoned, if he were thereof convicted according to law, would require such judgment.—(g.)

**XXXIII.** Every person lawfully convicted of stealing any bull, cow, ox, steer, or calf, shall be subject to a fine of forty-two dollars and eighty-five cents, for each and every bull, cow,

(b)—P. L. p. 153. (c)—P. L. p. 193. (d)—1805, Sess. Acts, p. 52.

(g)—P. L. p. 31.

ox, steer or calf so stolen And in case such offender shall not be able to pay such fine, he or she shall, instead therof, be subject to be publicly whipped, and receive a number of lashes or stripes not exceeding thirty-nine, on his, or her, bare back: And if such offender shall, at any time afterwards, repeat the like offence, he, or she shall, on conviction thereof, be subject to be publicly whipped, and receive on the bare back, a number of lashes or stripes, not exceeding fifty.—(h.)

XXXIV. If any person shall be indicted and found guilty of stealing any sheep, goats, or hogs, such person shall be subject to a fine of twenty-one dollars and forty cents for each sheep, goat, or hog, so stolen; and in case of non-payment, he or she shall, instead of such fine, be subject to be publicly whipped, and receive a number of lashes and stripes not exceeding thirty-nine, on his, or her, bare back: And in case of a repetition of the said offence, the offender shall, on conviction thereof, be publicly whipped, and receive, on the bare back, a number of lashes or stripes not exceeding fifty.—(g.)

XXXV. Every person who shall be lawfully convicted of wilfully and knowingly marking, branding, or disfiguring any horse, mare, gelding, colt, filly, ass, mule, bull, cow, steer, ox, or calf, belonging to any other person, shall, for each horse, mare, gelding, colt, filly, ass, mule, bull, cow, cow, ox, or calf, so branded or disfigured, as aforesaid, be subject to the penalty of eighty-five dollars and seventy cents; and on non-payment thereof, shall be publicly whipped, and receive a number of stripes or lashes not exceeding thirty-nine, on his, or her, bare back: And, in case of a repetition of the said offence, he or she shall, on conviction thereof, be liable to a fine of one hundred and seventy-one dollars and forty cents for each and every horse, mare, gelding, colt, filly, ass, mule, bull, cow, ox, steer, or calf by him or her killed, branded, or disfigured, of which he or she shall be convicted as aforesaid; and, in case of non-payment of the fine, he or she, shall be publicly whipped, and receive, on his, or her, bare back, a number of lashes or stripes, not exceeding fifty.—(g.)

XXXVI. If any person shall be lawfully convicted of wilfully and knowingly marking, branding, or disfiguring any sheep, goat, or hog, belonging to any other person, such person shall, for every sheep, goat, or hog, of which he or she shall be convicted of branding or disfiguring, as aforesaid, be subject to the penalty of twenty-one dollars and forty cents; and on non-payment, shall be publicly whipped, and receive, on the bare back, a number of stripes not exceeding thirty; and, in case of a repetition of the said offence, the offender shall, on conviction, be liable to the penalty of forty-two dollars, and eighty-five cents; and

(h)—P. I., p. 486.

(g)—Ibid., p. 486.

in case of the non-payment thereof, shall be publicly whipped, and receive, on the bare back, a number of stripes or lashes not exceeding fifty.—(g.)

**XXXVII.** If any person shall, in the night time, maliciously, unlawfully, and willingly, maim, wound, or otherwise hurt any horse, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed, such offender shall lose and forfeit, unto the party grieved, triple the damage thereby sustained; to be recovered by action of trespass, or upon the case, at the common law.—(q.)

**XXXVIII.** All witnesses duly subpoenaed, or bound over in recognizances, to attend and give evidence against any of the offenders mentioned in the 21st, 33d, 34th, 35th, and 36th sections of this chapter, and attending accordingly, shall be entitled to the same allowance or charges, as witnesses attending trials in the court of common pleas, to be paid out of the fines and penalties therein mentioned; and on defect thereof, out of any other fines or forfeitures, that may be in the hands of, or received by, the clerk of the court, where such offenders are tried.—(h.)

**XXXIX.** If any person shall wilfully, maliciously, and unlawfully, burn, or cause to be burned, any wain or wains, cart or carts, laden with coals, or any other goods or merchandize, of any other person, or persons; or shall wilfully, maliciously, and unlawfully, burn, or cause to be burned, any heap or heaps of wood of any other person, cut, felled, and prepared for making coals, billets or talwood; or shall maliciously, unlawfully, and willingly, cut off, or cause to be cut out, the tongue or tongues of any tame beast, or beasts, of any other person, or persons, the said beast then being in life; or shall maliciously, willingly, or unlawfully, cut, or cause to be cut off, the ear or ears of any person in this state, otherwise than by chance-medley, sudden affray, or adventure; or shall willingly, maliciously, and unlawfully, bark any fruit trees of any other person, or persons, such offender shall forfeit, to the party grieved, triple damages for such offence, to be recovered by action of trespass at the common law; and shall also lose and forfeit to the state, as a fine for every such offence, the sum of forty-two dollars and eighty-five cents.—(m.)

**XL.** If any person shall, in the night time, maliciously, unlawfully, and willingly burn, or cause to be burnt or destroyed, any ricks or stacks of corn, hay or grain, barns or other houses, or buildings, or kilns; or shall, in the night time, maliciously, unlawfully, and willingly, kill or destroy any horse, sheep, or other cattle, of any other person whomsoever, every

(g)—1786, P. L. p. 496 (q)—1712, P. L. p. 80. (h)—P. L. p. 487.

(m)—P. L. p. 57.

such offence shall be adjudged felony, and the offenders shall suffer as in case of felony.—(n.)

**XLI.** If any person shall wilfully, or maliciously, cut, break down, damage, or destroy any bank, or other work erected by the company established for the inland navigation from Santees to Cooper rivers, for the purpose of the said navigation, such person shall be adjudged guilty of felony; and on conviction, suffer death, without the benefit of clergy: And if any person shall throw dirt, trees, logs or other rubbish into the said canal, so as to prejudice the same, such person shall be answerable to the said company for the damages occasioned thereby.—(a.)

**XLII.** Every person, who shall apprehend any white person, or persons, guilty of burglary, or of the felonious breaking and entering any house in the day time, and prosecute him, or them, to conviction, shall have and receive the sum of eight dollars and fifty five cents, within one month after such conviction, to be paid by the treasurer of this state; such person producing a certificate to the said treasurer, under the hand, or hands, of the judge, or judges before whom such felon shall be convicted, certifying the conviction of such felon, for such offence, and also that such felon or felons were taken by the person, or persons, claiming the reward: And in case any dispute shall happen to arise between the persons apprehending any such felons, touching their right and title to the said reward, the said judge, or judges certifying, as aforesaid, shall, in their said certificate, direct and appoint the said reward to be paid to, and amongst, the parties claiming the same, in such shares and proportions, as to him, or them, shall seem just and reasonable.—(m.)

**XLIII.** If any person having a wife or children living, shall happen to be killed, maimed, or disabled from labor by any such burglar, or house breaker, in endeavouring to apprehend, or in making pursuit after, him, or them, then such person, in case he be maimed or disabled, shall be entitled to the same rewards as are allowed by the militia law, to poor freemen or white servants maimed or disabled in the public service: And if such persons shall happen to be killed, their wives and children, respectively, shall be entitled to the same rewards, as the wives and children of poor freemen and white servants killed in the public service are entitled unto by virtue of the said law, upon a certificate under the hands and seals of two of the nearest justices of the peace, of such person or persons being so killed, maimed or disabled from labor; which certificate the said justices, upon sufficient proof before them made, shall immediately give, without fee or reward: and the said justices shall

(n)—P. L. p. 80. (a)—Ibid, p. 407. (m)—Ibid, p. 274.

## CRIMES AND MISDEMEANORS.

97

In the certificate so given by them, determine and settle the right share and shares of the persons thereto respectively entitled.—(n.)

**XLIV.** If any felon, or felons, do rob, or take away any money, goods, or chattels, from any person within this state, whether from their person, or otherwise, and thereof be convicted, by reason of evidence given, or procured to be given by the party so robbed, the money, goods, or chattels, shall be restored to the said party; and the court, before which such felon shall be convicted, shall have power to award, from time to time, writs of restitution accordingly.—(a.)

**XLV.** The benefit of clergy shall not be allowed to any person more than once: And every person admitted to the benefit of clergy, if it be for murder, shall be marked with an M. upon the brawn of the left thumb, and if for any other felony, with a T. in the same place of the thumb, with a hot burning iron; which marks shall be made by the gaoler openly in court, before the judge, before such offender shall be discharged.—(b.)

**XLVI.** Every person allowed the benefit of clergy, shall, after being burnt in the hand, as before directed, be forthwith discharged; unless the court, before which such allowance of clergy is had, shall, for the further conviction of such offender, detain and keep him, or her, in prison for such time, as the said court may think fit, provided it do not exceed the term of one year.—(c.)

**XLVII.** Every person who shall, upon his, or her, arraignment for any felony, be admitted to the benefit of clergy by the laws of this state, and shall, before the said admission, have committed any other offence, for which clergy is not allowable, and not being thereof before indicted and acquitted, convicted or pardoned, shall and may be indicted for the same, and in all things ordered in such manner and form, as if there had been no such previous admission.—(c.)

**XLVIII.** If any person, or persons, shall bring, or cause to be brought, into this state, any free negro or person of color, and shall hold the same as a slave, or sell, or offer for sale, the same, to any person or persons in this state, as a slave, every such person, or persons, shall pay for every such free negro, or free person of color, the sum of one thousand dollars, over and above, the damages, which may be recovered by such free negro, or free person of color, to any person or persons, who will sue for, and recover the same; which may be done either by indictment or action, in nature of ravishment of ward, established by law.—(d.)

**XLIX.** Every master of a vessel or other person, who shall

(n)—1769, P. L.p. 274. (a)—Ibid, p. 46. (b)—Ibd, p. 44 & 74. (c)—P.L. p. 67 & 68. (d)—1820, Sets. Acts, p. 23.

bring into this state by water, or by land, any free negro, or mulatto, shall forfeit and pay, for every such free negro or mulatto so brought, the penalty of five hundred dollars, to be recovered by action of debt, or by bill, plaint, or information, in any court of record, having jurisdiction, of the amount; one moiety to be appropriated to the state, and the other to the prosecutor, or person who shall inform thereof; and the defendant, in every such case shall be required to give special bail: Provided that this act shall not extend to any masters of vessels bringing into this state any free negro or mulatto employed on board, or belonging to such vessel, and shall therewith depart; nor to any white person travelling into this state, having any free negro, or mulatto as a servant: but if said servant shall remain longer than six months within the state, then such white person shall be subject to the penalties aforesaid, and the free negro, or mulatto, shall be dealt with, as is provided in the case of free negroes or mulattoes migrating into this state: Provided that nothing herein contained shall affect any free person of color, being a native of this state, who shall return within the limits of this state within two years, or who shall leave this state as a servant of any white person, and shall return with any white person in the same capacity.—(a.)

L. It shall not be lawful for any free negro or mulatto to migrate into this state; and every free negro or mulatto, who shall migrate into this state, contrary to this act, shall and may be apprehended and carried, by any white person, before some justice of the peace of the district or parish, where he or she shall be taken; which justice is hereby required to examine such free negro or mulatto, and to order him or her to leave this state; and every free negro or mulatto so ordered to leave the state, and thereafter remaining longer than fifteen days within the same, or having left the state, and thereafter returning to this state, unless it be in consequence of shipwreck, or some unavoidable accident, or as a seaman on board, or belonging to a vessel, with which he shall depart, or as a servant to any white person, travelling into this state; upon proof thereof made before any magistrate and three freeholders, and on conviction thereof, shall be subjected to a fine of twenty dollars; and in default of the payment thereof, shall be publicly sold, after ten days' notice, for a term of time not exceeding five years: and if such free negro, mulatto, or mustizo shall be found in this state, after the lapse of ten days after paying such fine or after such servitude under such sale, he or she shall be liable to be proceeded against in like manner, and shall be sold for the like sum, and for a time not exceeding five years, until such free negro, mulatto or mustizo shall depart the state.—(a.)

L.I. If any white person shall be duly convicted of having directly, or indirectly, circulated, or brought within this state, any written or printed paper, with intent to disturb the peace or security of the same in relation to the slaves of the people of this state, such person shall be adjudged guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and imprisoned, not exceeding one year: And if any free person of color shall be convicted in the mode provided by law for the trial of such persons, of such offence, he or she shall for the first offence, be sentenced to pay a fine, not exceeding one thousand dollars; and for the second offence, shall be whipped not exceeding fifty lashes, and be banished from this state, and any free person of color, who shall return from such banishment, unless by unavoidable accident, shall suffer death without the benefit of clergy.—(a.)

L.II. A woman guilty of any offence, for which a man would be admitted to the benefit of clergy, shall, for the first offence, be branded and marked in the hand upon the brawn of the left thumb with a hot burning iron, having a Roman M. or T. according to the nature of her offence, upon the same: The said mark to be made in open court by the gaoler, before the judge: and shall be further punished, at the discretion of the court, by imprisonment, whipping, or stocking; provided such imprisonment do not exceed the term of one whole year; and shall then be discharged for that offence.—(d.)

L.III. The clerk of the court of sessions, where any man or woman shall be convicted, shall, at the request of the prosecutor, or other person on behalf of the state, certify a transcript, briefly, and in few words, containing the effect and tenor of any indictment and conviction of such man or woman, of his, or her, having had the benefit of clergy, and the certainty of the felony and conviction, to the judges in such other district where such man or woman may be indicted; which certificate being produced in court, shall be sufficient proof that such man or woman hath before had the benefit of clergy.—(g.)

L.IV. Every person who shall be committed to the common gaul of any district in this state, by any justice, or justices, of

"In all felonies, whether new created, or by common law, clergy is now allowable, unless taken away by express words, of an act of parliament: 2. Where clergy is taken away from the principal, it is not of course taken away from the accessory, unless he be also particularly included in the words of the statute: 3. When the benefit of clergy is taken away from the offence, (as in cases of murder, buggery, robbery, rape, and burglary) a principal in the second degree, being present, aiding and abetting the crime, is as well excluded from his clergy, as he that is principal in the first degree: 4. Where it is only taken away from the person committing the offence, (as in the case of stabbing, or committing larceny in a dwelling-house, or privately from the person), his aiders and abettors are not excluded."—4 Bl. Co. p. 373.

(a)—1820, Sess. Acts, p. 23. (d)—P. L. p. 74. (g)—Ibid, p. 86

the peace, for any offence or misdemeanor, having means or ability to do the same, shall bear the charges of so conveying or sending him, or her, to gaol; and also the charges of such persons as may be appointed to guard them to the said gaol, and shall so guard them thither: And if any person so to be committed, as aforesaid, shall refuse to defray the said charges, or shall not pay the same, then such justice or justices of the peace shall give an order to the constable, who shall have the custody of such criminal, upon the public treasury for such sum of money, as shall be sufficient to defray the charge of safe conducting such person, or persons, so committed to gaol; and the said treasurer is hereby required to pay the same: And the judge or judges, of the court, before whom such criminal shall be tried, shall, upon conviction of such offender, by order, authorize and direct the constable, or constables, of the district where such offender shall reside, and from whence he, or she, shall be committed as aforesaid, or where he, or she, may have any goods, or other estate, to sell so much of such goods, or other estate, of such offender so convicted, as aforesaid, as shall satisfy and pay the charges of his, or her, being conveyed or sent to gaol as aforesaid: And the said constable shall return the sum so by him levied, to the public treasury, to replace the money so paid out of the treasury for defraying the charge of conducting the criminal to gaol as aforesaid; and the overplus, if any, shall be delivered to the party: And the sale of any goods and chattels made by the person committed, between the time of commitment and conviction, in order to avoid the payment of such charges, is hereby declared to be null and void.—(r.)

LV. If any person so committed shall not have, or be known to have, any property, which may be sold for the purposes aforesaid, it shall be lawful for the court sessions, upon examination of the matter in open court, to make an order for the payment of such reasonable charges, as aforesaid, directed to the public treasurer of this state, requiring him to pay the same.—(c.)

LVI. In case any criminal who shall be hereafter convicted, shall not have wherewithal to defray the fees and charges of prosecution, if it shall so appear to the said court, upon certificates thereof from the said court, such charges and fees shall be paid out of the public treasury.—(c.)

LVII. In all actions brought against any person or persons for taking any distress, making any sale, or other thing done in pursuance of the directions of this act, the defendants in such actions may plead the general issue, and give this act and the special matter in evidence; and after verdict found for such

defendant, or nonsuit of the plaintiff, the court shall award triple damages to the defendant, with costs of suit.—(c.)

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### DAMS.

EVERY person, who shall keep water during the winter, upon grounds, on which rice shall be planted the ensuing spring, shall, on or before the tenth day of March in every year, open the dams, which keep up the water, in a sufficient manner for letting off the same; and if any person shall neglect so to do, he, or she, shall forfeit and pay the sum of four hundred and twenty-eight dollars and sixty cents, for every such neglect, upon the complaint or information of any person, throughout whose land such water shall pass; and it shall be lawful for such person to inform, and sue for the same in any court of record in the district, where such offence is committed: and on conviction, one half thereof shall be paid to the informer, and the other half to the use of the poor of the district or parish in which the cause of complaint shall lie.—(a.)

II. Where any person has neglected to open his, or her, dam-in a sufficient manner for letting the water off the grounds before described, on or before the said tenth day of March in every year, it shall be lawful for any person affected thereby, at any time thereafter, either by himself, or herself, or by his, or her, overseer, agent, attorney, or trustee, to apply to any magistrate in the district for a warrant of survey, who shall, thereupon, notify to the defendant, the complaint made against him, or her, with the time and place of meeting, and summon three disinterested freeholders of the neighborhood, or parish, where the cause of complaint shall be; one of whom shall then be chosen by the defendant, and in case of his refusal, then by the magistrate, another by the complainant, and the third by the magistrate; who, being first sworn by the magistrate to determine the matter in dispute justly, and impartially, shall forthwith proceed to view the obstructions complained of: And if, on view thereof, the said freeholders, or a majority of them, shall be of opinion, that such obstructions do or may prevent the party complaining from planting his, or her, crop of rice in proper time, then, and in such case, it shall be lawful for the said freeholders, or a majority of them, to cause the same to be immediately opened, or removed in any way they shall think necessary for the purpose of giving the most effectual re-

lief to the party complaining: Whereupon, the defendant shall be obliged to pay all expences attending such survey: Provided always, that nothing herein contained shall be construed to extend to the imposing of any penalty on any person, or to cause his, or her, dams, or banks to be opened, who shall have made through his, or her, lands, a sufficient drain, or drains, (of which the said freeholders shall be the judges) to carry off the waters as expeditiously, as they could have passed through the natural courses or channels, in case no such banks had been erected.—(a.)

III. It shall be lawful for any person, between the said tenth day of March, and the first day of November in every year, to apply in manner aforesaid, for a warrant of survey on any obstructions, which he, or she, may conceive, do impede the conveying off of any surplus water on his, or her, rice grounds; and which, by remaining thereon, may prove any way injurious: And if any person shall make, or keep up, any dam, or dams, which shall stop the course of any water, so as to overflow the lands of any other person, or persons, without the consent of such other persons first had and obtained, which shall be injurious to the said person or persons, then in either case, the said magistrate, and the freeholders by him appointed, shall proceed in the same manner as is directed in the foregoing clause: Provided that, if in either of the last mentioned cases, the defendant shall neglect or refuse to attend at the survey, to choose a freeholder, as aforesaid, then the three freeholders, who had been summoned by the magistrate, shall proceed to determine the matter in dispute, in the same manner as if the defendant had been present, and had chosen a freeholder; which said freeholders shall, in both cases, certify to the said magistrate, under their hands, what shall have been by them done in the premises; the expenses attending which survey shall be paid by the party against whom the award of the said freeholders shall be given.—(a.)

IV. If any person, in *propria persona*, or by his or her overseer, agent, attorney, trustee, or servants, or slaves, or any other person, or persons, acting for him, or her, shall presume to stop up any dam, or dams, or replace any obstructions in any manner whatsoever, which have been ordered to be opened or removed by any freeholders as aforesaid, or which have been opened or removed, by himself, or herself, or by his, or her overseer, agent, attorney, or trustee, or by order of either of them, on the said 10th day of March, until the 10th day of July, every person so offending shall forfeit and pay the sum of eight hundred and fifty-seven dollars and twenty cents, to be recover-

~~ed~~ and disposed of in manner aforesaid. And if any person shall presume to obstruct, impede, or hinder, or otherwise interrupt, the opening of any dam, or dams, or the removing of any obstructions ordered to be opened, or removed by the freeholders, as aforesaid, every person so offending shall forfeit and pay the sum of two thousand one hundred and forty three dollars, to be recovered and disposed of in like manner as aforesaid.—(b.)

V. Where any dam, or dams, shall be made for the purpose of forming reservoirs of water, without a sufficient waste-way, which shall be found inadequate to sustain the weight of water against the same, the owner of such dam, or dams, shall immediately, as soon as may be, cause the same to be enlarged, and strengthened, and made substantial, with a sufficient waste-way; and if any person shall, at any time, neglect to strengthen his, or her dams, or shall erect any dam, or dams, for the purposes aforesaid, which, in the opinion of three freeholders, or a majority of them, to be appointed, and to proceed in manner before mentioned respecting surveys of dams across rice grounds, is, or are not made and regulated, as herein prescribed, every person so offending shall, on complaint of any person liable to be affected thereby, and on conviction thereof in any court of record in the district, where such offence is committed, forfeit and pay the sum of four hundred and twenty-eight dollars and sixty cents, for every such offence; to be sued for, and disposed of, in manner aforesaid.—(b.)

VI. Every freeholder to be summoned, as aforesaid, shall be a resident in the parish, or district where his attendance shall be required, who, upon being duly summoned, and attending any survey, as aforesaid, shall be entitled to receive the sum of two dollars for each day of his attendance, to be paid by the person against whom the award of the freeholders shall be given: And in case of the non attendance of any person, a resident, and summoned as aforesaid, unless prevented by sickness, or some reasonable excuse be made upon oath, to the satisfaction of the magistrate, every such person so neglecting to attend, shall forfeit and pay the sum of forty-two dollars and eighty-five cents, per day, for every such neglect or refusal.—(b.)

VII. If any person shall wilfully, maliciously, and unlawfully, cut, or cause to be cut out, the head, or heads, dam, or dams, of any ponds, pools, moats, stews, or other waters, or the head, or heads, pipe, or pipes of any conduit, or conduits, of any other person, or persons, every such offender shall forfeit and pay, to the party grieved, triple damages for every such offence, to be recovered by action of trespass; and shall, more-

**DISCOUNTS.**

over, forfeit and pay, to the use of the state, a fine of forty-two dollars and eighty-five cents.—(c.)

**VII.** No person shall be authorized, at any time, to keep water on any lands not his, or her, own property.—(d.)

**DISCOUNTS.**

In every action brought for the recovery of any debt, either in the plaintiff's own right, or in the right of his wife, or as executor or administrator of any person deceased, against the defendant, either in his own right, or in the right of his wife, or as executor or administrator, it shall be lawful for the defendant, if he have any account, reckoning, demand, cause, matter, or thing whatever, against the plaintiff, to give the same in evidence by way of discount; regard being always had to the cause of action, so that accounts, reckonings, demands, causes, matters, or things relating to the defendant in his own right, shall only be given in evidence by way of discount in actions brought against such defendant in his own right; and so, if such defendant is sued in right of his wife, or as executor or administrator of any person deceased; and the same shall be noted, and judgment entered up for the balance only: And if the plaintiff be found to be indebted to the defendant, judgment shall be entered for the defendant, with costs of suit, and execution go against the plaintiff: Provided, that the defendant intending to discount any sum of money, account, reckoning, demand, matter, or thing, alledged to be due and owing to him from the plaintiff, do make a copy of such sum, account, reckoning, demand, matter, or thing, which he intends to insist upon at the trial to have discounted, and deliver the same, with a notice of such intention, in writing, to the plaintiff, or to his attorney, at least twelve days before the trial of the cause, to the intent that the plaintiff may be prepared to disprove the same, if he see fit; and the articles of such discount shall be proved to the court where such cause shall be tried, in the same manner as plaintiffs are obliged to prove their debts and demands: Provided that no such discount, or set off, shall be admitted or allowed contrary to the meaning of the law for limitation of actions.—(e.)

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(c) 1721, P. L. p. 57. (d)—1799, 2d Faust, p. 271. (e)—1759, P. L. p. 246.

## DOWER.

It shall be lawful for any woman, who is entitled to dower, by thirds, in the lands, of which her deceased husband was seized in fee, at any time during their marriage, to apply [to the clerk of the court of common pleas for the district in which such lands shall be, (o.)] for a summons to be issued, and directed to all, and every person, or persons, who may be in possession of any of the said lands, or in any wise interested therein, commanding him, her, or them, to appear at the next court of common pleas to be holden for the district, provided the same shall be not less than ten days after the service of such summons, to shew cause why a writ of admeasurement of dower, to be directed to certain persons to be appointed for that purpose, should not be awarded: And if, upon the return of such summons, sufficient cause be not shewn to the contrary, the said court shall cause a writ for admeasurement of dower to be made out, and directed to five persons, two of whom shall be nominated by each of the parties, and a fifth by the court, commanding them, or a majority of them, within one month thereafter, being first duly sworn for that purpose, fairly, justly, and impartially, according to the best of their judgment, to admeasure, and make out to the plaintiff, and put her in full and peaceable possession of one third part of all the lands of her deceased husband; and when they have so done, they, or a majority of them, shall immediately return a general plat of the said land, with a certificate thereon in writing, under their hands and seals, describing the manner in which they have made the admeasurement aforesaid, into the office of the clerk of the said court, there to be recorded; and the same shall be final and conclusive on all the parties concerned therein: Provided always, that the said commissioners, or a majority of them, shall have power, and they are hereby authorized and required, in the admeasurement aforesaid, to have regard to the true and real value of the lands in question: And when the same cannot, in the opinion of a majority of them, as aforesaid, be fairly and equally divided without manifest disadvantage, then they, or a majority of them, shall assess a sum of money to be paid to the widow in lieu of her dower, by the heir at law, or such other person, or persons, as may be in possession of the said lands.—(a.)

II. The service of the summons shall be proved on oath, by the person who served the same: And if the person, or persons, who shall have been served with the said summons, shall

(o)—1799, 2d Faust, p. 315. (a)—1786, P. L. p. 498.

appear, and not shewing sufficient cause, as aforesaid, shall refuse to nominate two persons in the manner, and for the purposes herein before directed, then the court shall appoint them on behalf of such heir, or other person; and they, together with those nominated by the plaintiff, shall make such admeasurement and allotment, as before required; and the said commissioners so appointed, or a majority of them, having made due return thereof, the same shall be as effectual and binding on all parties, as if done in the manner first above prescribed.—(b.)

III. The persons who shall be appointed to make such admeasurement of dower, or a majority of them, may, if they shall think it necessary, call in, to their aid, one, or more surveyors, to run the lines of the said lands, and also the division lines thereof; and the expenses that may be incurred in making such admeasurement of dower, shall be paid by the person, or persons, who shall claim the property, or be in possession of the said lands.—(b.)

IV. In all cases where the widow of a person dying intestate shall accept the provisions made for her by the act abolishing the rights of primogeniture, and giving an equitable distribution of intestates' estates, the same shall be considered as in lieu and bar of dower.—(c.)

V. Where any estate in lands, tenements and hereditaments, shall be made to the husband and his wife, and to the heirs of the husband, or the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and wife for the term of their lives, or for term of life of the wife, or where any such estate shall be made to any other person or persons, or to their heirs and assigns, for the use and behoof of the said husband and wife, or for the use of the wife, for her jointure, in such case every married woman having such jointure shall be barred from all claim and title to dower in the lands and hereditaments of her said husband: Provided that, if any such woman be lawfully evicted from such jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, she shall be endowed of as much of the residue of her husband's lands, tenements, &c. whereof she was before dowerable, as shall amount to the value of the lands and tenements, from which she may have been so evicted or expelled: And provided also, that if any wife have any lands, tenements, or hereditaments given unto her, after marriage, for the term of her life, or otherwise, in jointure, and such wife shall survive her husband, in whose time the said jointure was made, she shall be at liberty, after the death of her said husband, to refuse to have the lands and tenements so given to her during coverture; and,

the repon, to demand and take her dower; by writ of dower or otherwise, in all such lands, tenements and hereditaments, as her husband was seized of an estate or inheritance in, at any time during her said coverture.—(d.)

**VII.** If a wife willingly leave her husband and go away, and continue with her adulterer, if she be convicted thereof, she shall be forever barred of her action to demand dower of her husband's lands, unless her husband willingly, and without coercion, be reconciled, and suffer her to dwell with him.—(g.)

**VIII.** It shall be lawful for any one of the associate judges of this state to grant writs of *dedimus potestatem*, for taking renunciations of dower and releases of inheritance, from feme covert, and all such renunciations and releases taken in pursuance thereof, shall be good and valid in law.—(h.)

### DRUNKENNESS, AND PROFANE SWEARING.

**I.** If any person shall continue drinking, or tippling, in any house, or tavern, where spirituous liquors are retailed, in a disorderly manner, such person being thereof duly convicted before a justice of the peace, shall, for every such offence, forfeit and pay the sum of two dollars and ten cents, to be paid to the commissioners of the poor of the district, where the offence shall be committed, to be levied of the offender's goods and chattels; and in default of a sufficient distress, or payment, the offender shall be committed to the common gaol, there to remain until the said penalty be truly paid.

**II.** If any person shall be duly convicted of profane swearing, or cursing, before any justice of the peace, the offender shall, for the first offence, forfeit and pay, to the use of the poor, the sum of forty three and three fourths cents; for the second offence after conviction, the sum of eighty-seven and a half cents; and for the third offence, one dollar and thirty-one cents: to be levied of the goods of the offender, by warrant of distress; and in default of a sufficient distress, the offender, if above the age of sixteen years, shall, by warrant under the hand and seal of the justice, before whom he shall be convicted, be publicly set in the stocks for the space of one hour, for any single offence, and for any greater number of offences, whereof he shall be convicted at the same time, two hours; and if the offender be under the age of sixteen years, and shall not forthwith pay the

(d)—1712, P. L. p. 51-52. (g)—Ibid, p. 30. (h)—1778, P. L. p. 292.

## DUELLING.

said forfeiture, he shall, by warrant as aforesaid, be whipped by the constable, or, in his presence, by the parent, guardian, or master, of such offender.—(h.)

III. If any justice of the peace or quorum shall wilfully omit the performance of his duty, [in the execution of the foregoing section,] he shall forfeit the sum of twenty-one dollars and fifty-five cents; one moiety whereof shall go to the informer, and the other moiety to the poor of the district, and be recovered by action of debt, in the court of common pleas for the said district, wherein the offence shall have been committed: in which action no protection, and not more than one imparlance shall be allowed: Provided, that no person shall be prosecuted for any offence against this or the preceding section, unless the same be proved, or prosecuted, within ten days after the offence is committed.—(h.)

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## DUELLING.

If any person, resident in, or being a citizen of, this state, shall fight a duel, or shall send, or give, or accept a challenge to fight a duel within this state, or within the limits of the U. States, his, or their, seconds, and every person directly, or indirectly concerned in fighting any duel, or sending, giving, accepting, or carrying, or conveying any such challenge, their counsellors, aiders, and abettors, upon being thereof lawfully convicted, shall be imprisoned for twelve months, and shall, severally, forfeit and pay a fine of two thousand dollars, the one half thereof to be appropriated to the use of the state, and the other half to the informer; and shall stand committed until such fine is paid, and until he, or they, shall, severally, give ample security, to be approved by one of the associate judges of this state, in the sum of two thousand dollars, for his perpetual good behavior; and shall be forever disqualified from holding any office of honor, profit, or trust, in, or under this state, or practicing law, physic, or divinity, within this state, or exercising any other profession, trade, or calling whatsoever: Provided however, that in case any death shall happen in consequence of any duel, this act shall not be so construed, as to save the offenders from the pains and penalties of the laws provided for the punishment of homicide.—(c.)

(h)—1712, P. L. p. 89. A labourer, common soldier, or seaman, forfeits only one half. (c)—1812, Session Act, p. 18.

## ELECTIONS.

ALL writs for the election of members of assembly shall be issued by the governor for the time being, and bear date forty days before the day appointed for the meeting of the said members, and shall be directed to such persons as may be appointed to manage the said election; (a.) and the managers appointed to conduct elections to be made by the people, shall be authorized to administer to each other the oath or oaths prescribed to be taken before entering on the duties of their appointment.—(b.)

II. In case of the death, removal from the district, or refusal to serve, of any manager or managers of elections to be made by the people, it shall be the duty of the delegation, in both branches of the legislature, or a majority of them, to appoint fit and proper persons to fill up such vacancy: which appointment, under the hands of the said delegation as aforesaid, shall be a sufficient authority to hold such election: Provided nevertheless, that nothing herein contained shall exempt any manager from such fine as is imposed by law, for not serving as manager.—(c.)

III. The names of the electors for members of the general assembly shall be fairly entered in a book, or roll, for that purpose, provided by the managers, to prevent any person from voting twice at the same election; and each person qualified to vote shall put into a glass, box, or sheet of paper, prepared for that purpose by the said managers, a piece of paper rolled up, wherein are written the names of the representatives he votes for; to which paper the elector shall not be obliged to subscribe his name; and if, upon the scrutiny, two or more papers with the names of persons written thereon for members of the assembly, be found rolled up together, or more persons' names be found rolled up together, or more persons' names be found written on any paper than ought to be voted for, every such paper shall be invalid, and of no effect: And those persons, who, after all the papers and votes are delivered in, and entered as aforesaid, shall be found, upon the scrutiny made, to have the majority of votes, shall be deemed and declared to be members of the succeeding general assembly, provided they be constitutionally qualified.—(a.)

IV. The elections shall begin at nine o'clock in the morning, and end at four in the afternoon; and upon adjourning the poll at convenient hours in the time of the said elections, the managers shall seal up the said box, glass, or paper, containing the votes rolled up and delivered in, as aforesaid, by the electors, with

(a)—1721—P. L. p. 113. (b)—1818, Sess. Act, p. 39. (c)—*Ibid.*, p. 48

## ELECTIONS.

their own seals, and the seals of any two, or more, of the electors then present; and upon opening the poll again, shall unseal the said box, glass, or paper, in the presence of the said electors, in order to proceed in the said election.—(a.)

V. The managers appointed in each election district shall, within seven days after the scrutiny is made, give public notice in writing, at some public place in the said district, to the person, or persons, so elected, that the inhabitants of the said election district have made choice of him, or them, to serve as their representatives, in the next succeeding general assembly, under the penalty of sixty dollars for his default or neglect therein; to be recovered in any court of record in this state, by action of debt, suit, bill, or plaint, and applied, one half to the use of the poor of the district, where such default shall happen, and the other half to him, or them, that will sue for the same.—(b.)

VI. If the managers of the election for any district, or parish, shall neglect to make a return, at the time and place the legislature is to meet, according to the exigence of the writ to them directed, the said managers so neglecting shall pay the sum of eighty-five dollars and seventy cents, to be sued for and recovered by the attorney-general, and paid into the treasury for the use of the state.—(c.)

VII. If any person appointed to manage an election for a member, or members of the general assembly, shall knowingly admit, or take the vote of any person not qualified according to the constitution of this state, or after any vote delivered in at such election, shall suffer any person whatsoever to open any such vote, before the scrutiny is begun, or shall make an undue return of any person for a member of the general assembly, such manager so offending shall forfeit, for every such vote taken and admitted, opened or suffered to be opened, as aforesaid, and for each undue return, the sum of sixty dollars; to be recovered and disposed of in the manner directed [in the fourth section of this chapter].—(d).

VIII. If any person shall, on any day appointed for an election of a member, or members, of the general assembly as aforesaid, presume to violate the freedom of the said election, by any arrest, menaces, or threats, or endeavor to overawe any person qualified, to vote against his inclination or conscience, or otherwise by bribery obtain any vote; or shall, after the said election is over, menace, despitefully use, or abuse any person because he hath not voted, as such person would have had him, every such offender, upon sufficient proof made of such violence, abuse or threatening, before any two justices of the peace, shall be bound over to the next court of sessions

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(a)—1721, P. L. p. 113. (b)—Ibid, p. 114. (c)—1787, P. L. p. 415. See also 1st Faust, p. 165. (d)—1721, P. L. p. 114.

to be holden for the district, where the offence is committed, himself in thirty dollars, and two sureties, each in the sum of fifteen dollars, to be of good behaviour, and to abide the sentence of the said court: And upon conviction, every such offender shall forfeit the said sum of thirty dollars, and be committed to goal, there to remain until the same shall be paid; which forfeiture shall go to the commissioners of the poor of the said district, or parish, for the use of the poor thereof: And if any person so offending shall be chosen a member of the general assembly, after conviction as aforesaid, he shall by a vote of the house to which he may belong, be rendered incapable to sit, or vote, as a member of that general assembly.—(g).

**IX.** The places of holding general elections in each election district, for a member, or members, to serve in either branch of the legislature, shall be fixed by a joint resolution of the senate and house of representatives.—(h).

**X.** No civil officer shall execute any writ, or other civil process, upon the body of any person qualified to vote for members of the general assembly of this state, either on his journey to, or return from, the place of election, or during his stay there on that account, or within forty-eight hours after the scrutiny for such election is finished, under the penalty of twelve dollars, (to be recovered from such officer, and disposed of in the manner prescribed in the fourth section of this chapter.) And all such writs and other process, executed within the times aforesaid, shall be null and void.—(m).

**XI.** Every person elected and returned, who shall serve in the senate, or house of representatives, shall duly appear at the time and place appointed for the meeting of the legislature, on pain of incurring the forfeiture of four dollars and twenty-five cents for every day he shall make default; and on his appearance, the cashier of the house, to which he belongs, shall, at pain of being proceeded against, as for a contempt of the house and breach of privilege, report to the president of the senate, or speaker of the house of representatives, as the case may be, the number of days such person shall have made default: and the president, or speaker, as the case may be, shall, thereupon, require him to shew cause why he should not pay such penalty, and shall leave to the judgment and determination of the house to which he shall belong, whether such penalty shall be exacted: And in case it shall be the determination of such house, that the same shall be exacted, the cashier shall demand the payment thereof, and in case of refusal, or non-compliance within seven days, the said person shall be taken into custody, and proceeded against by order of the house to

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(g)—1721, P. L. p. 115. (h)—1809, Sess. Acts, p. 60. (m)—1721, P. L., p. 115.

which he may belong, as for a contempt and breach of privilege : Provided, that any person duly elected and returned as member of either house of the legislature, who shall decline to serve and qualify, in case it may not be convenient for him to attend for the purpose, shall be at liberty to signify, and express his determination by a letter signed by himself, in the presence of a member of the same election district, who shall deliver the letter, addressed to the president of the senate, or speaker of the house of representatives, as the case may require.—(n).

XII. If any person, duly elected and returned as a member of either branch of the legislature, shall fail personally to appear and qualify, or to express his determination to decline, by letter, as aforesaid, at the meeting of the house, for which he is returned to serve; the cashier of the house shall report such default to the president, or speaker, and the person so making default shall be liable to be sent for at his own expence, and taken into custody, to answer and shew cause why he should not be liable to the penalties, and be proceeded against, [according to the directions of the foregoing section].—(a).

XIII. If any member of either house, who hath qualified and taken his seat, shall neglect to appear at the time and place, to which the house may be duly adjourned to meet, or convened by a requisition of the governor for the time being, he shall be liable to the same penalties, and be proceeded against, as above directed.—(a).

XIV. If the cashier of either house shall fail in his duty, as above prescribed, he shall be liable to be called on by the president, or speaker, to receive such censure or reprimand, as the case may require, and the house to which he belongs, may resolve and direct.—(a.)

XV. The elections for representatives to serve this state in the congress of the United States, shall always be holden at the same times and places, and be regulated and conducted by the same managers, as the elections of members for the state legislature.—(b.)

XVI. The managers of elections for representatives in congress in the several districts throughout this state, shall, within twenty days after any election, transmit to Columbia the ballots by them respectively taken, sealed with their seals, and directed to the governor or commander in chief of the state, or to the secretary of this state, by a person by them to be employed for that purpose, who, at the time of receiving such packet, shall take an oath before some magistrate, safely to convey and deliver the said packet agreeably to the directions, sickness and unavoidable accidents excepted, and, in case of

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(n)—1787, P. L. p. 415. (a)—Ibid. 416. (b)—1792, 1st Faust, p. 225.

sickness, that he will deliver the same in good order, and the seals unbroken at the time of such delivery, to some other person, to be conveyed to Columbia: And the governor, or secretary of state, as the case may be, on the receipt of any such packet, shall cause to be administered to the person delivering the same, the following oath: "I do solemnly swear (or affirm) that the paper or packet now delivered by me, with the contents, were placed in my hands by the managers of the election district of (or by in case he hath received the same from the person first entrusted,) and that the said packet hath not been delivered out of my custody to any person since the same was delivered to me, nor hath such packet or paper been opened by me, or by any other person with my knowledge, connivance, or consent, so help me God;" and the several persons, who shall be employed in conveying the said packets to Columbia, from the several election districts in this state, shall be paid three dollars per day for coming to, and going from, Columbia, allowing forty miles for each day's journey.—(c.)

XVII. The governor or commander in chief, or in case of his sickness, death or absence, the lieutenant governor, shall, on every first Monday in December next after each succeeding election, cause the said return to be publicly opened, examined, and counted, in his presence, at Columbia, by three or more commissioners to be by him under his hand and seal appointed for that purpose, and shall ascertain the number of votes given at the different elections, for every person, and what persons shall have respectively, the greatest number of votes in the said several districts; and shall then deposit the original poll of each of the said districts in the office of the secretary of state: And after having ascertained what persons have been elected, as before directed, he shall notify, by proclamation, that those persons have been duly elected members of the house of representatives in the congress of the United States: Provided, that if the governor and lieutenant-governor shall both be absent from Columbia, the secretary of state, together with the three commissioners to be appointed as before directed, shall open and count the votes, and ascertain the persons elected, as aforesaid, and transmit the result thereof to the governor, or in case of his absence, or death, to the lieutenant governor, to be notified by proclamation, as aforesaid: And provided also, that the three commissioners to be appointed as aforesaid, shall, in all cases before they proceed to act in the premises, take an oath before some magistrate, that they will faithfully, and impartially, and to the best of their skill, discharge the duties by law required of them.—(c.)

(c)—1792, 1st Faust, p. 226—7, and 1812, Extra Session Acts, p. 5.

## ELECTIONS.

**XVIII.** The managers of the said elections, the next day after the polls shall be closed, shall count over in a public manner, the ballots, which shall be given in the respective election districts, for the respective candidates, or persons balloted for; and the said managers shall keep an account in writing, of the number of votes, which each candidate shall have, and shall also transmit to the governor, with the ballots, a duplicate of such account.—(g.)

**XIX.** In case the same person shall be returned for two or more of the said districts, he may, within twenty days after due notice shall be given him thereof, choose for which district he will serve, and on his making such choice, or neglecting so to do within the said term, the governor or commander in chief shall direct another election to be held within twenty days thereafter, for the vacant district, or districts, to be conducted and regulated as before directed: and the governor or commander in chief shall proceed in the same manner, where the member elected in any of the said districts refuses to serve, or omits to signify to the governor or commander in chief, within Twenty days after he has received due notice of his election, his intention of serving; and in case of the death of any person elected, or if his seat shall become vacated by any other means, or if two or more persons shall have equal votes for the same district, the governor or commander in chief shall order a new election, as the case may require, to be conducted as nearly as may be in the manner before prescribed.—(g.)

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(g)—1792, 1st Faust, p. 228, and 1812, Extra Sess. Acts, p. 5. Electors of a president and vice-president of the United States shall be appointed by ballot, on the Tuesday preceding the first Wednesday in December in every fourth year succeeding the last election, in the house of Representatives at Columbia, by the legislature of this state, which shall be then existing, or by any such persons as shall then be returned members theron, and shall attend on that day. And the electors so chosen, previous to vacating their appointment, shall, before his excellency the governor, or commander in chief for the time being, or in case of his absence, before one of the justices of the quorum, take the following oath or affirmation: "I A. B. do solemnly swear (or affirm, as the case may be) that I will faithfully and conscientiously discharge my duty as an elector of a president and vice-president of the United States, so help me God."—(a.)

The electors shall meet in their respective states, and vote, by ballot, for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves: They shall name, in their ballots, the person voted for as president, and, in distinct ballots, the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the government of the United States, directed to the president of the senate.—(b.)

The electors shall meet and give their votes on the first Wednesday in December, at such place in each state, as shall be directed by the legislature theron; and the electors in each state shall make and sign three certificates of all the votes given by them; each of which certificates shall contain two distinct

(a)—1792, 1st Faust, p. 208. (b) Amendment of the Constitution of the United States, ratified 1804.

## EMBRACERY.

If any juror shall take any thing, by himself, or another, to give his verdict, and shall be thereof convicted, he shall forfeit and pay ten times as much, as he hath taken; and every embracer, who shall procure any juror to take gain for giving his verdict, being thereof lawfully convicted, shall be subject to the same forfeiture; one half, in both cases, to go to him who will sue for the same, and the other to the state; and in default of payment, such juror, or embracer, shall be sentenced to one year's imprisonment.—(m.)

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## ESCAPE.

If any sheriff, or his deputy, shall permit any prisoner committed to his custody, to go, or be, without the prison walls, if

lists, one of the votes given for president, and the other, of the votes given for vice-president: They shall seal up the said certificates, certifying on each, that lists of all the votes of such state given for president, and of all the votes given for vice-president are contained therein; and shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of, and deliver to the president of the senate, at the seat of government, before the first Wednesday in January then next ensuing, one of the said certificates; and the said electors shall forthwith forward, by the post office, to the president of the senate, at the seat of government, one other of the said certificates; and shall forthwith cause the other of the said certificates to be delivered to the judge of that district, in which the said electors shall assemble.

The executive authority of each state shall cause six lists of the names of the electors for the state to be made and certified, and to be delivered to the said electors, on or before the day fixed by law for them to meet and vote for president and vice-president; and the said electors shall enclose one of the said lists in each of the certificates by them made and sealed, as aforesaid.—(c.)

In case there shall be no president of the senate at the seat of government, on the arrival of the persons entrusted with the lists of the votes of the electors, then such persons shall deliver the lists of votes in their custody into the office of the secretary of state, to be safely kept and delivered over, as soon as may be, to the president of the senate.

The persons appointed by the electors to deliver the list of votes to the president of the senate, shall be allowed, on the delivery of the said lists, twenty-five cents for every mile of the estimated distance, by the most usual road, from the place of meeting of the electors to the seat of government of the United States: And if any person appointed to deliver the votes of the electors to the president of the senate, shall, after accepting his appointment, neglect to perform the services required of him, he shall forfeit the sum of one thousand dollars.—(c.)

It is necessary to make six distinct certificates; three containing lists of the votes given for president, and three containing lists of the votes given for vice-president, in each of which, is to be enclosed one of the governor's certificates of the names of the electors for the state.

(m)—1731, P. L. p. 36. (c)—Laws U. S. 1792, vol. 2, p. 22, and 1804, vol. 6, p. 142, &c.

such prisoner has not given security for the bounds or rules, and if such security has been given, shall suffer such prisoner to go, or to be at large, out of the rules of the prison, except by some writ of habeas corpus, or rule of court, (which rule shall not be granted but by motion in open court,) every such going and being out of the prison, or rules, as the case may be, shall be deemed and adjudged an escape.—(a.)

II. If any sheriff, or his deputy, shall, after one day's notice in writing, given for that purpose, refuse to shew any prisoner committed to his charge, to the plaintiff, at whose suit such prisoner was committed, or to his attorney, such refusal shall be adjudged to be an escape.—(a.)

III. Upon an escape, the plaintiff may proceed either against the defendant to retake him, or against his security, or in case the security should prove deficient, against the sheriff, who shall ultimately be answerable in damages for such escape.—(a.)

IV. No retaking on fresh pursuit shall be given in evidence on the trial of the issue, on any action of escape, against the sheriff, or keeper of any gaol in this state, unless the same be specially pleaded: Nor shall any special plea be taken or allowed, unless oath be first made in writing by such sheriff, or gaoler, against whom such action shall be brought, and filed in the office of the court, where such action shall be depending, that the prisoner, for whose escape such action is brought, did make such escape without his privity, knowledge, or consent.—(b.)

V. No judgment shall be entered against any sheriff, or other officer, in any suit brought on the escape of any debtor, or prisoner, in his custody, unless the jury, who shall try the issue, shall expressly find that such debtor, or prisoner, did escape with the consent, or through the negligence of such sheriff, or other officer; or that such prisoner might have been retaken, but that immediate pursuit was neglected.—(c.)

VI. If any person committed or charged in custody, in execution, mesne process, or warrant of commitment, to any district prison, shall thence escape, it shall be lawful for any justice of the peace of the district, where such prisoner was confined, upon oath of such escape before him made, by the sheriff, or his officers, or by the gaoler of such prison, to grant to them, or any of them, one or more warrants under his hand, to all sheriffs and constables within the state, reciting the cause of such prisoner's commitment, and time of escape, as aforesaid, and commanding them, and every of them, in their respective districts, cities, and towns, to seize and retake such prisoner going at large, and [him, or her,] being so retaken, forthwith

(a)—1788, P. L. p. 457 (b)—1712, P. L. Appx. p. 15.

(c)—1785, P. L. p. 376.

to convey, and commit to the prison, where prisoners are usually kept, in the district where such retaking shall be, there to be kept in safe custody, until he, or she, can be safely removed to the district where such prisoner had, at the time of escaping, been confined; and the sheriff or other officer so retaking such prisoner, shall convey, as soon as possible, the prisoner so retaken to the gaol of the district, whence such person had escaped, unless the further detention of such prisoner so retaken shall be ordered by lawful authority: And where any person, or persons, accused of treason, or sedition, felony, or other capital offence, shall be committed to any gaol, and the sheriff, or his under sheriff, shall have cause to suspect such person may be rescued, or will attempt and will probably effect his escape, such sheriff shall and may impress a sufficient guard for securing such prisoner or prisoners, so long as such prisoner, or prisoners may continue in gaol; and all persons impressed, as aforesaid, who shall refuse or neglect to obey such sheriff in keeping guard, as aforesaid, without giving a lawful excuse to the satisfaction of the court, at its next sitting thereafter, shall, each, forfeit and pay the sum of eight dollars and fifty-five cents, for every twenty-four hours such person shall refuse or neglect to keep guard as aforesaid; and shall, moreover, be imprisoned by the said court, for his contempt, for any time not exceeding two months: The fine, upon trial and conviction, to be paid to the order of the said court, for the use of the district.—(s.)

VII. It shall be lawful for any person, or persons, that are, or shall be, bail in any suit or action, in any court of record in this state, for any person, or persons, so taken and conveyed to gaol, as aforesaid, to have, out of such court, where he, or they are or shall be bail, a writ directed to the sheriff of the district, to the gaol whereof such prisoner so retaken shall be committed, and detained, commanding such sheriff to detain and keep such prisoner in custody, in discharge of his bail; which writ, with an account whether he leath the said prisoner in his custody, shall be returned by the said sheriff into court, at a day therein to be mentioned; and the delivery of every such writ to the sheriff, or his deputy, shall be decreed and taken to be an effectual render of such prisoner, in discharge of the said bail; and, in case such sheriff, his deputy, or other his inferior officer, shall, thereafter, suffer the person so rendered in discharge of his, or her bail, to escape, they, and every of them, so offending, shall be liable to damages, as in the cases of escape after render of the principal, in discharge of his, or her, bail: And every sheriff, upon request of any bail, as aforesaid, who shall

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(s)—P. L. p. 376. Escape warrant may be executed on Sunday, P. L. Appendix, p. 18.

ed by one of the judges, to the escheator, pronouncing the said lands to be eschewed, and vested in the state; and directing him, forthwith, to sell and convey the same according to law.—(d.)

IV. As soon as escheated lands shall be vested, as aforesaid, in this state, the escheator shall advertise the sale thereof in the state gazette, and also in the most public places in the district, in which the lands lie, giving six months' public notice, on a credit of twelve months, payable with lawful interest; and shall take good and sufficient security, and a mortgage of the premises, before the title shall be altered or changed.—(d.)

V. Where the lands shall exceed six hundred acres, and can be divided into small tracts, with advantage to the state in the sale thereof, the escheator shall cause the same to be divided, in such manner as shall be most beneficial to the state; and the money arising from such sale shall be forthwith paid into the public treasury, whenever the same shall be recovered: Provided nevertheless, that if any person, or persons, shall appear within five years, and make good title to such lands in the court of common pleas, on an issue tried, he, she, or they, shall forthwith receive adequate compensation.—(d.)

VI. Any person, or persons, shall be heard, without delay, on a traverse in the court of common pleas, on the petition, setting forth his, or their right; and the said lands shall be committed to such petitioner, if he, or she, shall shew good evidence of his, or her, title to hold, until the right shall be discussed, and found for the state, or the claimant; such claimant giving sufficient security to prosecute his, or her, suit with effect, and without delay, and to render to the state the yearly value of such lands, if the right be found for the state; and where no claimant shall appear to make title, as aforesaid, the escheator shall root out the escheated lands, if the same can be done with advantage to the state, until the process of escheat shall be concluded, and the lands sold: Provided that, if any suit for property supposed to be escheated, shall be prosecuted by any escheator, and the jury, before whom such trial shall be had, shall think there is no probable cause, such jury shall assess and award, to the party grieved, such damages as they shall think proper.—(d.)

VII. The state shall not be precluded by possession, grant, conveyance, or any other cause, or title, from making inquiry and sale of all such lands, as have heretofore eschewed to the state by the death of the person last seized therof: Provided, that no lands claimed under, grant, or, under, an actual possession for five years prior to the fourth day of July 1776, shall be affected by this act.—(g.)

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(d)—1787, P. L. p. 429. (g)—1787, P. L. p. 430.

VIII. Where any monies, or other personal estate, shall be found in the hands of an executor or administrator, being the property of any person deceased, leaving no person entitled to claim, according to the statute of distribution, and without making any disposition of the same, the escheator of the district, where such chattels shall be found, or the attorney general, on behalf of the state, shall sue for and recover, either at law, or in equity, and pay the same into the public treasury: And the said treasurer, for the time being, shall advertise the same in the state gazette, once in every month, for six months, in like manner, as lands are herein before directed to be advertised; and if no person shall appear and make good title to such personal estate, within two years thereafter, other than as executor or administrator, or their legal representatives, then such personal estate shall become vested in, and applied to the use of the state.—(g.)

IX. Nothing herein contained shall prejudice the rights of individuals having legal title, who may be under the disabilities of infancy, coverture, lunacy, or absence beyond the limits of the United States, until three years after such disabilities shall be removed.—(g.)

X. Each of the said escheators shall, as a compensation for his trouble, costs, and charges, in the discharge of his duty, be entitled to receive the commission of two and a half per cent. out of all monies which, by virtue of this act, shall be paid by him into the treasury; and where any person or persons, shall appear and make title to lands, or personal estate, after office found by the jury, the court shall have power to assess such reasonable costs and charges, as the escheator hath sustained in promoting the claim of the state, except in cases, where he has already received his commissions.—(g.)

XI. If any escheator shall fail to do his duty agreeably to law, in behalf of the state, and any loss or damage shall accrue to the state by his misconduct, or fraudulent practice, the offender shall be responsible for all such loss or damage, and the court of common pleas shall order a prosecution in the name of the state; and the jury shall try the fact and assess the damages and costs: And upon conviction, such escheator shall be incapable, forever thereafter, of holding any place of trust, or profit, within this state.—(g.)

XII. No escheator shall, directly, or indirectly, purchase, or be concerned with any person in purchasing, any escheated lands, upon pain of forfeiting the sum of twenty-one thousand four hundred and thirty dollars, to be sued for and recovered in any court of record; one half for the benefit of the informer, and the other half to be applied to the use of the state: And the said

**ESTRAYS.**

escheator shall also be rendered incapable of holding or exercising any office of trust, or emolument therin.—(b.)

XIII. No member of either branch of the legislature shall be capable of holding or exercising the office of escheator.—(g.)

**ESTRAYS.**

If any estray shall be found wandering in, or about, the plantation of any freeholder, or settled resident, he, or she, shall have power to take the same into possession, and shall advertise such estray within three days thereafter, at three, or more, public places in the district, or parish, wherein the person taking up such estray may reside; And the said person shall, within ten days after advertising, as aforesaid, take such estray to the nearest magistrate, (except hogs, sheep, neat cattle, and goats, which shall be appraised at the place where taken up;) and the said magistrate shall cause the same to be appraised on oath by three proper persons of the vicinage, who shall certify their appraisement under their hands; which certificate shall contain an accurate description of the color, size, age, brands, and marks, of the said estray; all which being done, the said magistrate shall enter the said certificates, at large, in his toll-book; and shall, within ten days thereafter, send a duplicate of such certificate to the clerk of the court of the district, in which the said estray shall have been taken up; except in the districts of Charleston and Beaufort, where such certificate shall be entered, at large, by the magistrate in a book to be by him kept for that purpose, which shall be subject to the examination of all persons requiring it: And for making such entry, for each horse, mare, ass, and mule, the said magistrate shall be entitled to receive fifty cents; and for each head of neat cattle, hogs, sheep, or goats, twelve and a half cents, to be paid him by the person who shall take up the same.—(a.)

II. Where no owner shall appear and prove his property, within six months after the posting and advertising, as aforesaid, it shall be lawful for the magistrate, before whom such estray shall be brought, and it shall be his duty, to cause the said estray to be publicly advertised for ten days, and sold on a credit of six months; and the purchaser shall give his note with approved security to the magistrate, in the name of the com-

(b)—1787, P. L. p. 431. (g)—Ibid, p. 430. Escheated lands vest in the state at the death of the intestate, and the state is entitled to all mesne profits.—*City Council of Charleston, vs. Large, 1 Mill*, p. 454.

(a)—1803, 2d Faust, p. 516.

misioners of the roads of the district, or parish, wherein such stray shall be taken up; which note the said magistrate shall deliver immediately to the said commissioners of the roads, who shall have power, in default of payment, to sue for, and recover, the same: Provided nevertheless, that, if any person shall put in a just and lawful claim to such stray, at any time after the sale, and before the note becomes due, the said commissioners shall give up the said note to the claimant, on his paying the customary fees; but if no such owner shall appear, the said commissioners of the roads shall cause the amount of the same to be collected and appropriated to the repairs of the high roads and bridges of the dist<sup>t</sup>, t, county, or parish, where such stray shall be taken up. And, in case any part of the monies arising from such sale and note shall remain unappropriated in the hands of the commissioners of the roads, they shall pay over the same to the commissioners of the poor.—(b.)

III. All stray horses, asses, and mules, beside the above notice, shall be advertised in the gazette nearest the place, where such stray shall be taken up; for which the printer shall be entitled to one dollar, to be paid by the taker up of such stray, and taken out of the sales of the same.—(c.)

IV. The magistrate shall be allowed seventy-five cents, and no more, on any horse, ass, or mule, concerning which he shall proceed, as aforesaid; and the same on a herd of any other estrays; but on a single stray of the kind last mentioned, he shall have twenty-five cents; and the constable employed by the magistrate shall receive fifty cents for every stray by him sold, except for neat cattle, hogs, sheep, or goats, for which he shall receive ten cents, and six cents for every mile he shall necessarily ride, while employed, as aforesaid, about any stray; the same to be paid by the owner, or from the monies collected on the notes, as aforesaid.—(c.)

V. If any person shall take up any horse, mare, or gelding, ass, or mule, he, or she, shall be allowed to put them to moderate labor, as a compensation for keeping the same; but shall be liable to an action for damages by the owner of any such stray, for any abuse thereof, if the said owner shall claim the said stray within the time by law prescribed.—(q.)

VI. Every person, who shall take into his, or her possession, any stray, and neglect to pursue the directions of the law; or shall convert the same to his or her use, shall be liable to a fine of twenty dollars, to be recovered in any court of record having jurisdiction in this state, to be given to the informer; and shall, also, be liable to an action, on the case, by the owner of such stray, for damages.—(q.)

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(b)—1803, 2d Faust, p. 517. (c) —Ibid, p. 518 (q)—Ibid, p. 519.

**EVIDENCE.**

VIII. If any person shall wilfully, scatter any stone horse, above the age of twenty months, to run at large in the woods, it shall be lawful for any person to catch and geld such horse; and such person shall have a right to recover from the owner thereof, two dollars and ten cents for so doing. (g.)

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**EVIDENCE.**

If any person, upon whom process out of any court of record in this state, shall be served, to testify or depose concerning any cause, or matter depending therein, do not appear according to the tenor of such process, having no lawful excuse for the contrary, he shall lose and forfeit, for every such default, the sum of forty-two dollars and eighty-five cents, and shall yield further recompence to the party grieved, at the discretion of the court, out of which the said process was awarded, according to the loss sustained by such party, by reason of the non-attendance of such witness, the said several sums to be recovered by action of debt, bill, or plaint, in any court of record in this state: Provided the party claiming the same shall have tendered to such witness, at the time of the service of such process, such reasonable sum of money, for his costs and charges, having regard to the distance of the places, as may be proper to be allowed in that behalf. (a.)

II. Each material witness attending court, who resides in the city, town, or village, where the court is held, shall be allowed, per day, the sum of fifty cents; and each witness from the country, including horse hire, per day, one dollar, besides his ferrage, or toll, to be taxed in the bill of costs, and to be paid to such witness by the plaintiff, or defendant, who subpoenaed him, before he gives in his evidence, if he desires it.—(b.)

III. If any person shall be summoned by subpoena, or other lawful process, to appear to give evidence against any person, at any court of general sessions, and shall neglect to appear and give evidence according to such summons, he shall forfeit the sum of eight dollars and fifty cents, with such damages as shall be sustained by the plaintiff, or defendant, to such summons; or if any person so summoned, or bound over by recognizance, to give evidence, shall appear, and refuse to give evidence in the said court, it shall be lawful for the presiding judge, or judges, to set a fine upon such offender, not exceed-

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(g)—1789, P. L. p. 479. (a)—1712, P. L. p. 62. (b)—1781, 1st Part, p. 9—See also P. L. p. 116.

ing the sum of eighty-five dollars and seventy cents, for the use of the state; and to commit the offender till payment thereof, together with the lawful fees of such commitment: But every person summoned, or bound by recognizance, to appear as a witness to give evidence against a person accused, indicted, arraigned, or tried, for treason, felony, or other capital offence, who shall refuse or neglect to appear, or give evidence in such case, shall be dealt with according to the order of the common law.—(c.)

IV. It shall be lawful for the clerk of the court of common pleas of any of the districts of this state, wherein any action or suit is depending, upon the application of any person interested therein, to grant a commission, or commissions, to examine witnesses out of the state, or witnesses, whose attendance cannot be procured by reason of their age, sickness, or infirmity, touching their knowledge of the matters, or things, in controversy, in as full and ample a manner as if the application had been made to one of the judges of the said court: Provided, that ten days' notice be given to the adverse party, and that such age, sickness, or infirmity, be proven before the said clerk, by a certificate, on oath of some disinterested person of reputable character.—(d.)

V. Either of the judges of the courts of common pleas and equity, the clerks of the courts of common pleas, or commissioners in equity, shall have authority, on application of either of the parties to any suit or action commenced, or instituted, in any of the courts of law or equity in this state, (such application being accompanied by the affidavit of the party applying that the testimony of such witness or witnesses is material to him, her, or them, on the trial of such suit or action, and that they reside at a greater distance than one hundred miles from the court, where the said action is instituted, or that he, she, or they, have reasons to suspect, and does, or do, verily believe that such witness, or witnesses, is, or are, about to remove without the limits of this state, before the sitting of the next court in which the said trial or action may be pending, or before the said suit or action will stand ready for trial,) to grant a commission to examine the said witness, or witnesses, de bone a*vis*, in the same manner, as is provided by law for the examination of aged and infirm witnesses.—(a.)

VI. When a commission shall issue by consent of parties, or otherwise, out of any court of judicature of this state, to examine any witness, or witnesses, residing within this state, touching any matter or thing depending in such court, a subpoena shall be issued in due and legal form, commanding such

(c)—1731, P. L. p. 129. (d)—1799, 2d Faust, p. 323. (a)—1816, *Sess. Acts*, p. 50.

## EVIDENCE.

witness, or witnesses, to attend before the commissioners named in the commission, at a certain time, and at some place not more than fifteen miles from the residence of such witness, or witnesses, respectively, and answer, on oath, according to their knowledge, to the interrogatories and cross interrogatories annexed to the said commission; which subpoena shall be served personally on the witness, or witnesses, therein named, at least two days before attendance is required by it; and such witness, or witnesses, so attending and giving evidence, shall be entitled to the sum of one dollar each, for every day of necessary absence from home, and all necessary ferrages in going to, and from, and attending the said commissioners, to be paid by the party obtaining the commission, before it is delivered out of the hands of the commissioners, who shall estimate the number of days, for which payment is allowed as aforesaid, and retain the commission until such payment is made: And if any witness, on whom such subpoena shall be served, shall refuse or neglect to attend according to the command thereof, or so attending shall refuse to answer, on oath, to the interrogatories and cross interrogatories therewith annexed, or to any of them, such witness shall be liable to the same action, pains and penalties, as witnesses, who refuse or neglect, when duly subpoenaed, to attend in any court of record in this state, or so attending, refuse to give evidence: Provided that nothing herein contained shall be construed to authorize commissioners to attach or commit persons summoned as witnesses; but any of the superior courts of this state, on such subpoena as is herein before mentioned being produced, and satisfactory information given on oath, that it was, personally, and in due time, served on any witness therein named, who refused or neglected to attend according to the command of the said subpoena, or attending refused to answer, as aforesaid, shall have power to order an attachment against such witness, to appear and answer for such neglect or refusal, as for a contempt of the court; which attachment shall be served by the sheriff of that court, where it was awarded, or his deputy, and shall run into any part of the state; and such other proceedings shall be had thereon as are usual in other cases of attachment for contempt: And provided also, that nothing in the foregoing part of this section shall extend to persons unable to leave home, by reason of age, infirmity, sickness, or bodily hurt; all which persons, whenever it may be necessary to examine them by commission, in causes depending either in this state, or any other of the U. States, shall be attended by the commissioners: And in case of their refusal to give evidence, or answer to the interrogatories, or cross interrogatories, under any such commission, shall be liable to the action of the party, who may be injured by the want

of their testimony; and shall make reparation in damages for such injury.—(g.)

VII. When a commission shall issue out of a court of judicature in any other of the U. States, to examine a witness, or witnesses, residing in this state, touching any cause, matter, or thing, depending in such court, the person having obtained such commission, or his agent, shall produce it to a judge of the supreme court of this state, who, on being satisfied of its authenticity and regularity, shall direct a subpoena to issue in due form, from the clerk's office of the nearest court of common pleas, requiring the witness, or witnesses, named in such commission to attend before the commissioners therein also named, at a certain time and at some place, &c. (*witnesses entitled to the same compensation, liable to the same penalties, and to be proceeded against in the same manner as in the foregoing section.*)—(h.)

VIII. Whenever it shall be necessary to bring any prisoner into court, it shall be lawful for the presiding judge to order such prisoner to be brought into court without a writ of habeas corpus; and when the said prisoner shall have given his evidence, to remand him to the custody of the officer, to whose keeping he shall have been originally committed.—(m.)

IX. No tradesman or handcraftsman, keeping a shop book; his executors or administrators, shall be permitted to give such shop book in evidence in any action for money due, wares delivered, or work done, above one year before such action brought: but this limitation shall not extend to any intercourse of traffic, merchandize, buying, selling, or other trading or dealing for wares delivered, money due, or work done between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing falling directly within the circuit, or compass, of their mutual trades and merchandize.—(n.)

X. An exact copy of any entry from the books of either of the treasurers, certified by the comptroller, shall be received as evidence in any action or suit in any court of law, or equity, within this state, in as ample a manner, as if the original books of the treasurers were produced.—(n.)

XI. It shall be lawful for any party, plaintiff or defendant, in any court in this state, to produce in evidence, a copy certified by the secretary of state and surveyor general, of any grant and plat of land issued under the authority of this state, or certified copies of grants under the authority of the state of North-Carolina: Provided the party so producing an offical copy of a grant in evidence swear that the original grant is

(g)—1794, 1st Faust, p. 383. (h)—Ibid, p. 381. (m)—1808, Sess. Acts, p. 42. (n)—1712, P. L. p. 74. (a)—1801, 2d Faust, p. 428.

lost or destroyed, or out of his power: and that he hath not destroyed, mislaid, or in any way willingly, previous to that time, put it out of his power to produce the same, with intention to produce an office copy thereof in evidence: Provided; also, that nothing in this section contained, shall be construed to affect the rights of any person in possession of the original grant. —(h.)

XII. Attestated copies of all records signed by the keepers of such records respectively, shall be deemed good evidence in the courts of this state, as the originals could, or might, have been, if produced to the said courts: Provided no testimonial, probate certificate, or other instrument under the seal of any foreign court of law, notary public, or other magistrate or person empowered to give the same, shall be received as good evidence in

(b)—1804, 2d Faust, p. 498.

Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceeding, of every other state; and the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.—(a.)

The acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: And the records and judicial proceedings of the courts of any state shall be proved, or admitted, in any other court within the U. States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal; together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form: And the said records and judicial proceedings authenticated, as aforesaid, shall have such faith and credit given to them in every court within the U. States, as they have, by law or usage, in the courts of the state, from whence they are, or shall be, taken.—(n.)

All records and exemplifications of office books, which may be kept in any public office of any state, not appertaining to a court, shall be proved, or admitted in any other court, or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office may be kept; or of the Governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer. And the said certificate, if given by the presiding justice of the court, shall be farther authenticated by the clerk, or prothonotary, of the said court, who shall certify under his hand, and the seal of his office, that the said presiding justice is duly commissioned and qualified: or, if the certificate be given by the Governor, the Secretary of State, the Chancellor, or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is given: And the said records and exemplifications, authenticated, as aforesaid, shall have such faith and credit given to them in every court and office, within the U. States, as they have, by law or usage, in the courts or offices of the states from whence the same shall be taken.

The provisions of this act, as well as of the act of 1790, shall apply, as well, to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the U. States, and countries subject to their jurisdiction, as the public acts, records, office books, judicial proceedings, courts, and offices of the several states.—(m.)

(a)—Cons. U. S. art. 4. sec. 1 (n)—1790, Laws U. S. vol. 1, p. 116.  
(m)—1804, Laws U. S. vol. 7, p. 152.

## **EXECUTORS AND ADMINISTRATORS.** 129

any court of judicature in this state; (a) unless it shall appear to such court, that the testimonials, probates, certificates, and other instruments of writing, issued from any of the courts of this state, by any of the officers thereof authorized to grant the same, are received and allowed as evidence in the courts of such foreign country: And in such case only shall the courts of this state receive the testimonials, probates, certificates and other instruments of such foreign country, as good and sufficient evidence of any debt, due, on demand, which may be owing by any person residing within the limits of this state.—(c)

XIII. If any person shall appear in any of the courts of justice, or before any judge, or magistrate, in this state, either as juror, witness, party, or otherwise, in any cause, civil, or criminal, and shall make a solemn and conscientious declaration and affirmation, according to the form of his profession, in any matter, cause or thing, wherein an oath is required by law, such solemn and conscientious declaration, or affirmation, shall be deemed, held, and judged, and taken as valid and effectual, to all intents and purposes, as if such person had taken an oath on the Holy Evangelist of Almighty God.—(d.)

## **EXECUTORS AND ADMINISTRATORS.**

THE ordinary, before whom any will shall be proved, or administration granted, on application of the executors or administrators, shall give to them a true copy of the order respecting such probate, or administration, certified under his hand; which shall be sufficient to entitle them to maintain actions for the recovery of possession of the estate therein mentioned.—(a.)

If, When any person shall make a will in writing, without appointing an executor or executors therein, or the executor, or executors appointed shall refuse to qualify, the court, where such will shall be proved, shall grant letters of administration, with the will annexed, to such person, or persons, as would have been entitled thereto, if the deceased had died intestate; and where any person shall die intestate, the ordinary of the district, where the will of such person, had he, or she, left one, would have been proved, shall grant letters of administration to them, who shall be entitled thereto.—(b.)

III. Where any executor or administrator shall die intestate, not having fully administered, the same court by which the for-

(a)—1721, P. L. p. 117. (c)—1787, P. L. p. 435. (d)—1731, P. L. p. 128.  
(a)—1789, P. L. p. 493. (b)—Ibid, p. 492.

130 EXECUTORS AND ADMINISTRATORS.

mer probate, or administration, was granted, shall determine the right, and grant letters of administration of the estate so unadministered.—(a.)

IV. Where any person shall die intestate, or the executors named in a will refuse to qualify, the judge of the court of ordinary of the district having the right shall grant administration of the goods of the testator, or intestate, to his, or her, relations, in the order following, in exclusion of all other persons, to wit: first, to the husband, or wife, of the deceased; and, if there be no such, or they do not apply, then to the child, or children, or their legal representatives; if none such apply, then to the father, or mother; in default of them, to the brothers, or sisters; in default of them, to the next of kindred to the deceased, at the discretion of the ordinary, as shall be entitled to a distributive share of the intestate's estate; and in default of such, to the greatest creditor, or creditors, or such other person, as the court shall see fit to appoint; and such administrator, or administrators, shall have an action to demand and recover all debts due to the intestate; and shall, also, answer to all persons to whom the said intestate was holden or bound; and be accountable to the ordinaries, in the same manner, as executors (b): Provided always, that if any widow, after having obtained letters of administration, as aforesaid, shall marry again, it shall be at the election of the ordinary, to revoke the administration so granted, or join one or more of the next of kin in the administration with her.—(a.)

V. No letters of administration shall be granted to any person, or persons, whomsoever, as principal creditor, or creditors, but upon special trust and confidence, and for the benefit of all the rest of the creditors; and all debts of an equal nature shall be discharged by such administrator, in average and proportion, as far as the assets of the intestate shall extend; and no preference shall be given among the creditors in equal degree: And every such administrator shall be obliged to sue for such debts, as he may reasonably expect to recover, or, at the request and proper charges of any of the creditors of the intestate, assign, and empower them, or any of them, to sue for the debts outstanding to the estate of such intestate.—(c.)

VI. If any person applying for letters of administration on the estate of any person deceased, will not swear that deceased made no will, in manner as directed by law, but shall make it appear, upon oath, that such deceased had made a will, which cannot be found by such person so applying, and that such person so applying verily believes the said will to be lost or destroyed, together with the causes and reasons of such belief, it shall be lawful for the ordinary, to whom such application is

(a)—1789, P. L. p. 492. (b)—1712, P. L. p. 35. (c)—1745, P. L. p. 202.

made, to grant such letters of administration to the person so applying for the same, during such time, as the said last will and testament shall be so lost, and 'till the same shall be found and duly proved according to law, and no longer: Provided that all affidavits to be made of the loss or destruction of any last will and testament, whereon to ground an application for letters of administration, shall be made before, and taken in writing by, the person, to whom such application is made, and signed by the parties swearing; and when sworn to, shall be filed and recorded in the office of the person so granting such administration.—(d.)

VII. Ordinaries appointed executors of the last wills and testaments of any persons deceased, within their several jurisdictions, and choosing to take upon themselves the burthen and execution thereof, shall prove such last wills and testaments, and qualify as executors thereof, before one, or more, of the judges of the court of common pleas, either during term time, or vacation: And in cases, where ordinaries may seek or require administration of the goods, chattels, rights and credits of any person, or persons, dying intestate, within their several and respective jurisdictions, or administration, with the will annexed, either one, or more, of the said judges of the court of common pleas, in term time, or during the vacation, may have cognizance and jurisdiction of, and determine respecting the same, and grant letters of administration, if the said ordinaries should be thereto, respectively, entitled, and take bonds for due administration, and do all other acts thereunto incident: Provided the said ordinaries, respectively, shall record, in their several offices, the last wills and testaments aforesaid, and probates thereof, and letters of administration, and all other proceedings in cases testamentary, and of administration, in the same manner as is practiced with respect to costs, where they may not be interested or concerned, after the same shall have been recorded in the office of the clerk of the district, where such will shall be proved, or administration granted, as aforesaid.—(g.)

VIII. If any person shall, by will, appoint his debtor to be his executor, such appointment shall not, in law, or equity, be construed to be a release, or extinguishment of the debt, unless the testator shall, in his will, expressly declare his intention to release the same.—(h.)

IX. Every executor, or administrator, with the will annexed, at the time of proving the will, or obtaining administration, shall take the following oath: "I, do solemnly swear, that this writing contains the true last will of the within named deceased, so far as I know or believe; and that I will well and truly exe-

(d)—1778, P. L. p. 290. (g)—1789, P. L. p. 472—See also Extra Sess. Acts, Aug. 1812, p. 7. (h)—1789, P. L. p. 494.

**132 EXECUTORS AND ADMINISTRATORS.**

cure the same, by paying, first, the debts, and then, the legacies contained in the said will, as far as his goods and chattels will extend, and the law charge me; and that I will make a true and perfect inventory of all such goods and chattels: So help me God." And the administrator, with the will annexed, shall enter into bond, with good and sufficient security, to be approved by the ordinary, in a sum equal to the value of the estate at least, the condition of which bond shall be in the form following, to wit: The condition of this obligation is such, that if the above bound administrator, with the will annexed, of the goods, chattels, and credits of deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which have, or shall, come to the knowledge, or hands, of the said , or into the hands, or possession, of any other person for him, and the same so made, do exhibit into the said court of ordinary, at such time, as he shall be thereunto required by the said court, and the same goods, chattels, and credits, do well and truly administer, according to law, and make a true and just account of his actings and doings, when by law required; and, further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels, and credits will extend, and the law require, then this obligation to be void, or else, to remain in full force: Which bond shall be made payable to the ordinary of the district, and may be sued, from time to time, by any person injured by the breach thereof, until the whole penalty shall be recovered; and the damages sustained being assessed on such suit by the verdict of a jury, may be levied by execution, and paid to the party, for whom they were assessed.—(m.)

X. Every administrator shall, in open court, when letters of administration are granted to him, take the following oath, or affirmation, to wit: "I, do solemnly swear (or affirm) that deceased, died without any will, as far as I know, or believe, and I will well and truly administer all and singular the goods and chattels, rights and credits of the said deceased, and pay all his just debts, as far as the same will extend, and the law require me; and that I will make a true and perfect inventory of all the said goods and chattels, rights and credits, and render a just account thereof, when thereunto required: So help me God:" And such administrator shall also enter into bond, with good security, to be approved by the ordinary, in a sum equal to the full value of the estate, with the following condition: The condition of the above obligation is such, That if the above bound administrator of the goods, chattels and credits of deceased, do make a true and perfect invento.

ny, of all and singular the goods, chattels, and credits of the said deceased, which have, or shall come to the hands, possession, or knowledge of the said , or into the hands or possession of any other person, or persons, for him; and the same so made, do exhibit into the said court of ordinary, when he shall be thereunto required, and such goods, chattels, and credits, do well and truly administer according to law; and do make a just and true account of his actings and doings therein, when required by the said court; and all the rest of the said chattels, goods, and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the said court, shall deliver and pay unto such persons respectively, as are entitled to the same by law: And if it shall hereafter appear, that any last will and testament was made by the said deceased, and the same be proved in court, and the executors obtain a certificate of the probate thereof, and the said (administrator) do in such case, if required, surrender and deliver up the said letters of administration, then this obligation to be void, or else to remain in full force: Which bond shall be made payable to the ordinary of the district, and his successors, and may be sued in like manner, as if prescribed in the case of bonds given by administrators with the will annexed: And if the ordinary of the district shall fail to take bond with security, as aforesaid, such ordinary shall be liable to be sued for all the damages arising from such neglect, by any person, or persons, interested in the estate. (—m.)

XI. When any will shall be proved, or application made for the administration of the estate of any person dying intestate, the ordinary shall direct the executors or administrators, as the case may be, to make out an exact inventory of the personal estate of the deceased, and shall appoint three, or more reputable freeholders, who shall appraise the same, on oath; which inventory and appraisal shall be returned to the ordinary of the district within such time, as he shall limit: and if the goods lie in several districts, the ordinary having jurisdiction, shall order appraisal, and appoint appraisers in each, which, when made, shall be transmitted by the appraisers, to the court of ordinary, where the will was recorded, or administration granted; and every appraisal made, as aforesaid, may be given in evidence in any action against such executors or administrators, to prove the value of the estate; but shall not be conclusive, if it shall appear on the trial of a cause, that the estate was really worth, or *bona fide* sold for, more or less, than such appraisal. —(n.)

XII. The appraisers shall be allowed one dollar each per day, whilst employed in appraising any estate, to be paid by the

(m)—1789, P. L. p. 493. (n)—Ibid, p. 492.

executors, or administrators; which expense shall be allowed in the settlement of the accounts.—(n.)

XIII. Every executor, or administrator, who shall qualify himself for the administration of the estate of his testator, or intestate, shall, upon oath, be bound to produce and shew to the appraisers, that shall be appointed by the ordinary for that purpose, or to any three, or more, of them, all and singular the goods and chattels of the said testator, or intestate, which have, or shall, come into their, or either of their, hands, possession, or knowledge; and shall cause to be made a true and just appraisement, upon oath, of all and singular the goods and chattels aforesaid, together with a full and perfect inventory of all and singular the rights and credits of the said testator, or intestate, whether the same be in ready money, judgments, bonds, or other specialities, or notes of hand, and a list, or schedule, of the books of account of such testator, or intestate, with the number of pages in such book, (to which books all the parties concerned shall, at all convenient times, have free access:) and every such executor and administrator shall be chargeable with so much of the said credits only, as he shall, after due and proper diligence, recover and receive.—(a.)

XIV. No persons, who shall be appointed to appraise the goods and chattels of any testator or intestate, shall enter upon the execution of that office, before he shall have taken the following oath before some justice of the peace, to-wit: " You,

do swear (or affirm,) that you will make a true and just appraisement of all and singular the goods and chattels (ready money only excepted,) of deceased, which shall be produced by the executor, (or administrator,) of the estate of the said deceased, and that you will return the same, certified under your hands, unto the said executor, (or administrator,) within the time prescribed."—(a.)

XV. No executor, or administrator, shall be permitted to take any estate, or any part thereof, at the appraisement.—(a.)

XVI. Every executor and administrator, who shall fail to insert and mention in the inventory and appraisement of the estate of his testator or intestate, all, or any of, the effects, or credits, which come into his hands to be administered, shall be chargeable with, and subject to, the payment of all and singular the said testator's or intestate's debts, legacies and bequests, in the same manner, as executors of their own wrong.—(a.)

XVII. The debts due by any testator, or intestate, shall be paid by executors, or administrators, in the order following, to wit; Funeral and other expenses of the last sickness; charges of probate of will, or of letters of administration; debts due to the public; judgments, mortgages, and executions, the

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(n)—1739, P. L. p. 492. (a)—1745, P. L. p. 202.

oldest first; rent; then bonds and other obligations in equal degree; and lastly, debts due on open accounts: but no preference whatever shall be given to creditors in equal degree, where there is a deficiency of assets, except in the case of judgments, mortgages that shall be recorded, from the time of their being recorded, and executions lodged in the sheriff's office, the oldest of which shall be first paid; or in those cases, where a creditor may have a lien on any particular part of the estate.—(b.)

**XVIII.** Every executor, or administrator, shall give three weeks' notice by advertisement in the state gazette, or at three different places of the most public resort in the district, for creditors to render accounts of their demands; and they shall be allowed twelve months to ascertain the debts due to, and from, the deceased, to be computed from the probate of the will, or granting of letters of administration: And, creditors neglecting to give in a statement of their debts within the time aforesaid, the executors, or administrators, shall not be liable to make good the same; nor shall any action be commenced against any executor, or administrator, for the recovery of the debts due from the testator, or intestate, until nine months after such testator's or intestate's death.—(b.)

**XIX.** Executors and administrators shall, annually, whilst the estate shall remain in their care or custody, render to the ordinary of the district, from whom they obtained probate of will, or letters of administration, a just and true account, upon oath, of the receipts and expenditures of such estate, the preceding year; which, when examined and approved, shall be deposited with the inventory and appraisement, or other papers belonging to such estate, in the ordinary's office, there to be kept for the inspection of such persons, as may be interested in the said estate; and if any executor, or administrator, shall neglect such annual account, he shall not be entitled to any commission for his trouble in the management of the said estate; and shall, moreover, be liable to be sued for damages, by any person, or persons, interested in the said estate.—(c.)

**XX.** Whenever any person shall direct, by his, or her, last will and testament, duly executed in the presence of three, or more credible witnesses, that his, or her, lands shall be sold for the payment of debts, or the purpose of distribution amongst legatees, it shall be lawful for the executors of such person, or a majority of such executors as shall qualify on the said will, if no person is expressly named for that purpose, to sell and convey the said lands, agreeably to the intention of the testator: And if the executor, or executors, should die, or renounce according to law, then the administrator, or administratrix, with the will annexed, shall be authorized to sell the

(b)—1729, P. L. p. 494. (c)—1799, P. L. p. 495.

186 EXECUTORS AND ADMINISTRATORS.

real estate of the said deceased, as directed in and by the will.—(d.)

XXI. If an executor, or administrator, with the will annexed, having power under the will, to dispose of the estate, or any part thereof, shall take such security, as shall be clearly proved to have been sufficient at the time, such executor, or administrator, and his securities, shall be liable to make good any loss or damages, that the creditors or legatees may sustain; to be recovered by action on the case, or by action of debt on the bond of such administrator and his security; wherein such damages shall be assessed by the verdict of a jury.—(g.)

XXII. When it shall be requisite to make sale of any part of the personal estate of any testator, or intestate, either for payment of debts, or a division, or to prevent the loss of perishable articles, application shall be made to the ordinary, in whose office the will was recorded, or administration granted: Whereupon such ordinary may refuse, or grant, an order for sale, regulating the time and place, and credit to be given, in such manner, as to do impartial justice to all persons interested therein.—(g.)

XXIII. No administrator shall be cited or compellable to account, before any court, for the personal estate of his intestate, otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person, or persons, in behalf of a minor, or having a demand out of such personal estate, as a creditor, or next kin.—(h.)

XXIV. Actions of trespass may be maintained by, or against, executors, or administrators, for any goods taken or carried away in the life time of the testator, or intestate; and the damages recovered shall be, in the former case, for the benefit of the estate, and in the latter case, out of the assets.—(m)

XXV. No distribution of the goods of any person dying intestate, shall be made, 'till one year after the intestate's death be fully expired': And every one, to whom any shall be allotted, shall give bond with sufficient security, in the court of ordinary, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear, he, or she, will, in every such case, refund and pay back to the administrator, his, or her, rateable part of such debt or debts, and of the costs of suit, and charges of the administrator by reason of the same, out of the part or share so, as aforesaid, to him, or her, allotted; thereby to enable such administrator to pay and satisfy the said debt, or debts, so discovered after distribution made, as aforesaid.—(n)

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(d)—1787, P. L. p. 423 (g)—1789, P. L. p. 493. (b)—1712, P. L. p. 84  
—(m)—Ibid, p. 32-35. (n)—Ibid, p. 82.

## EXECUTORS AND ADMINISTRATORS.

137

**XXVI.** If any person shall die after the first day of March, in any year, the slaves, of which he, or she, was possessed, whether held for life, or absolutely, which were employed in making a crop, shall be continued on the lands, which were in the occupation of the deceased, until the crop is finished, and then be delivered to those, who have the right to them; and such crop shall be assets in the executor's or administrator's, hands, subject to debts, legacies, and distribution; the taxes, overseer's wages, expenses of physic, food and clothing being first paid: And the emblements of the lands, which shall be served before the last day of December following, shall, in like manner, be assets in the hands of the executors, or administrators: But all such emblements, as are growing on the land on that day, or at the time of the testator's or intestate's death, if that happens after the said last day of December, and before the first day of March, shall pass with the lands. And if any person shall rent, or hire any lands, or slaves, of a tenant for life, and such tenant for life dies, the person having such land, or slaves, shall not be dispossessed till the crop of that year be finished, he, or she, securing the payment of the rent, or hire, when due.—(a.)

**XXVII.** Where any person, not a citizen of this state, shall die indebted to a citizen thereof, on open account, the assets and effects, within the same, of such deceased person, being sufficient for the payment of all his debts, shall be liable to discharge the debts due to citizens of this state, in the same manner, as if the same had been liquidated by bond or other specialty.—(b.)

**XXVIII.** Executors of executors shall do and perform all things in the execution of the will of the first testator, which shall remain undone, at the death of the first executor; and shall and may sue, or be sued, in all things respecting the estate in the same manner, as such first executor could or might have sued, or been sued.—(c.)

**XXIX.** The executor or administrator of a rightful executor, or administrator, by whom any waste shall have been committed, shall be chargeable in the same manner, as his testator, or intestate, might have been.—(d.)

**XXX.** Every executor and administrator shall, for his care, trouble, and attendance, in the execution of their several duties, take, receive, or retain in his hands, a sum not exceeding the sum of two dollars and fifty cents for every hundred dollars, which he shall receive, and the like sum of two dollars and fifty cents for every hundred dollars which he shall pay away in credits, debts, legacies, or otherwise, during the course or con-

(a)—1789, P. L. p. 494. (b)—1788, P. L. p. 464. (c)—1712, P. L. p. 347.  
d)—1712, P. L. Appx. p. 14.

138 EXECUTORS AND ADMINISTRATORS.

tinuance of his management or administration, and so in proportion for any sum less than one hundred dollars: Provided that no executor or administrator shall, for his trouble in letting out any monies upon interest, and again receiving the same, be entitled to take, or retain, any sum exceeding one dollar for every ten dollars, for all sums arising by monies let out to interest, and, in like proportion, for a greater or less sum: Nor shall any executors or administrators, who may be creditors of any testator or intestate, or to whom any sum of money, or other estate, may be bequeathed, be entitled to any commissions for paying, or retaining, to themselves any such debts or legacies.—(g.)

XXXI. The commissions given to executors and administrators shall be divided amongst them in proportion to the services by them, respectively, performed, to be rated and settled by the ordinary of the district, who granted probate of the will, or letters of administration, if the executors, or administrators, cannot agree among themselves concerning the same.—(g.)

XXXII. Executors and administrators, who shall have any extraordinary trouble in the management of the estates under their care, and shall not be satisfied with their legal commissions, shall be at liberty to bring an action in the court of common pleas for compensation for their services; and the verdict of the jury and judgment of the court thereupon shall be final and conclusive but no judgment shall be given for more than five per cent. over and above the sums herein before allowed.—(h.).

XXXIII. If any sureties for administrators conceive themselves in danger of being injured by such securityship, they may petition the court, to which they stand bound, for relief; which court shall summon the administrator to appear, and thereupon make such order or decree, as shall be sufficient to give relief to the petitioner.—(m.)

XXXIV. Every person not being appointed executor of the last will and testament of any person deceased, or not having the administration of the goods and chattels, rights and credits, of any person deceased, who shall, nevertheless, possess himself, or herself, of the goods and chattels, rights and credits of such deceased person, and become executor of his, or her, own wrong, shall be liable as a trespasser; and also liable to be cited by any person, or persons, having right or claim to the property of the deceased, or creditors, by process from the court of ordinary of the district, or court of equity, to make discovery, and give account of all and singular the goods and chattels, rights and credits of the deceased; and shall be liable to make compensation and reparation for all the goods, chattels, estate

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(g)—1789, P. L. p. 495. (h)—1765, P. L. p. 202. (m)—1789, P. L. p. 496.

or assets, he, or she, may have wasted, or which may have been lost by his, or her, illegal interference, on becoming executor de son tort, as aforesaid, and shall be chargeable, as far as assets shall have come into his, or her, hands, and be, in every other respect, liable and chargeable as executors of their own wrong at common law.—(n.)

XXXV. The executor, or administrator, of any executor de son tort, who shall have wasted or converted any goods, chattels, estate or assets, of any person deceased, to his, or her, own use, shall be liable and chargeable in the same manner as his testator, or intestate, would have been, if living.—(n.)

### FEME COVERT.

EVERY femme covert having any right or claim to any lands or tenements within this state, or any other action or suit whatsoever, shall have power to constitute an attorney under her hand and seal, to prosecute such her claim, action, or suit, either in her own name, or in the names of her husband and self, as if her husband had joined with her in such power of attorney; and such attorney so constituted shall have power to prosecute such suit or claim to effect; and her husband shall not have power to abate, discontinue, or release her claim, or action, without her voluntary consent given in open court, and recorded in the proceedings; neither shall such suit or action be any way abated on account of such woman being under coverture, but the proceedings shall be, in all things, as good and effectual in law, as if such woman were sole, or her husband had joined with her in such suit.—(m.)

II. Any femme covert, being a sole trader, notwithstanding her husband may be absent from this state, shall be liable to any suit, or action, to be brought against her for any debt contracted, as sole trader; and shall, also, have full power and authority to sue for and recover, naming her husband, for conformity, from any person whomsoever, all such debts, as have been, or shall be contracted with her, as a sole trader; and all proceedings to judgment and execution by, or against, such femme covert, being a sole trader, shall be, as if such woman was sole, and not under coverture.—(d.)

(n)—1739, P. L. p. 495. (m)—1712, P. L. p. 104. (d)—1744, P. L. p. 190.

## FENCES.

**ALL** planters, and others, inhabitants of this state, who plant corn, or other provisions, or any other thing, which they would have secured from damage, shall make, and, from time to time, maintain and keep a good, strong, and sufficient fence, six feet high, about all such provisions, or other things.—(a.)

**II.** No planter or other person shall have, in any of his enclosures, any canes, or stakes, or other thing, that may injure any horse, neat beast, or cattle, under the forfeiture for every such offence, of the sum of eight dollars and fifty-five cents, to be paid to the commissioners of the poor.—(a.)

**III.** If any horse, neat beast, or cattle, shall be found breaking into, or in, any person's plantation, having such sufficient fences, as aforesaid, the owner, or owners, of such horse, neat beast, or cattle, shall be liable to pay to the owner of such plantation, for the first trespass, the full value of the injury sustained; and for a second trespass of the same horses, or neat cattle, in the same plantation, double the amount of damage committed, to be recovered by due course of law.—(a.)

**IV.** If any person shall, in the night time, willingly, maliciously, and unlawfully, throw down any enclosure, or destroy any plantation of trees, he, or she, so offending, shall lose and forfeit, unto the party grieved, triple the amount of damage thereby sustained.—(b.)

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## FERRIES AND TOLL BRIDGES.

It shall be the duty of every person keeping a ferry, to keep the banks of the river, or creek, at such ferry, in good order; and in case of neglect, such person shall be subject to a fine of three dollars for each day of such neglect, to be recovered before any magistrate having jurisdiction.—(h.)

**II.** Every person, in whom any public ferry, toll bridge, or causeway, shall be vested by law, shall keep fixed up in some conspicuous place, the several rates established by law; and for failing so to do, every such person shall forfeit all such toll, as he would have been entitled to receive; and if any keeper of a

(a)—1694, P. L. p. 1.—See also, 1st Faust, p. 52, which takes away the jurisdiction of justices of the peace, in all cases of trespass, or tort.

(b)—1712, P. L. p. 80. (b)—1809, Sess. Acts, p. 72.

public ferry, toll bridge, or causeway, shall ask, demand, or receive greater rates, than are fixed or authorized by law, he shall forfeit and pay five dollars, to be recovered by warrant and execution from any justice of the peace, one half of which sum shall go to the informer, and the other half to the use of the poor of the district, or parish, in which it is recovered.—(m.)

III. All ferry-men and keepers of ferries, throughout this state, who shall unnecessarily keep and detain any passenger, his horse, or cattle, goods, or carriages, in crossing or passing any ferry, shall, for every quarter of an hour of such detention, forfeit and pay the sum of two dollars, to be recovered before any magistrate residing in the district, or parish, where such ferry shall be established.—(n.)

IV. If the water at any bridge or ferry should be so low, as for persons with their horses or cattle to be able to ford the same, the proprietor of such ferry, or bridge, shall not be allowed to take any toll for fording the same; and no old ford, nor the roads leading thither, shall be obstructed: And the commissioners of the public roads, respectively, shall keep the roads leading to such old accustomed fords open, and in good repair: Provided nothing herein contained shall be construed to infringe the charter granted to any company to promote the inland navigation of this state.—(o.)

V. No keeper of any ferry, or toll bridge, or other person, shall, on any pretence whatever, stop up or obstruct any fording or crossing place on any river, or creek, in this state, with a view to compel any person to cross over any ferry, or toll bridge, under the penalty of two dollars and ten cents, to be recovered before the nearest justice of the peace, for every person so prevented from crossing over such fording or crossing place.—(a.)

VI. In all disputed cases whatsoever, the disfranchising space, between ferries and bridges, established in the vicinity of each other, shall be admeasured, either by the distance by water, or the approachable road, and, in no case, by a straight line, except where a practicable road exists in such straight line, or might be made with as little expense and inconvenience to the public, as in any other course.—(b.)

VII. Every keeper of an established ferry shall keep and maintain a good and sufficient ferry-boat, with one or more able bodied white men to attend for transporting passengers and their servants, horses, carriages, cattle, sheep, and hogs; and if any person keeping a ferry within this state, shall not provide one free white man, constantly to attend the same, he shall,

(m)—1799, 2d Faust, p. 288, and Sess. Acts, 1814, p. 64. (n)—1795, 2d Faust, p. 61. (o)—1792, 1st Faust, p. 288, and 1813, Sess. Acts, p. 80.

(a)—1791, 1st Faust, p. 113. (b)—1806, 2d Faust, p. 332.

for every month of such failure, forfeit the sum of three dollars and forty cents, for the use of such person, or persons, as shall prosecute for the same, to be recovered before any one justice of the peace, by warrant of distress and sale of the offender's goods.—(c.)

VIII. The president of the United States, and his suit, the governor and commander in chief of this state, members of both branches of the legislature coming to attend, and going from, the legislature, all ministers of the gospel and other persons going to, and returning from divine service, all persons necessarily attending on patrol or militia duty, all persons in times of alarm in the part of the state, in which such ferries are situate, all expresses to or from this government, their servants, and horses, all jurors summoned to attend any of the courts of this state, all witnesses bound over to give evidence in any prosecution, and their servants and horses, and all managers of elections for colonels and majors in the militia in going to and returning from any place of elections, (e) shall be exempted from paying any ferrage, toll or duty for passing or repassing any of the ferries or bridges established by law.—(c.)

IX. Every person owning, or having the management of, any ferry, bridge, or causeway, established in this state, shall be bound to give the same attendance to every person exempted, as aforesaid, without fee or reward, as to any person chargeable with toll, or ferrage; and in default thereof, shall incur the same penalties as he would be liable to, if a like default were made with respect to any person chargeable with toll, or ferrage.—(d.)

X. If the owner, or keeper, of any bridge, or ferry, shall insist on receiving, or compel, by threats or other like means, the payment of toll, or ferrage, from any person declared to be exempted from the payment of the same, such owner, or keeper, shall be subject to a fine not exceeding four dollars, to be recovered by warrant under the hand and seal of any justice of the peace of the district, or parish, adjoining to the bridge, or ferry, where such exaction shall be made.—(e.)

XI. The keepers of all private ferries usually putting over passengers for hire, shall be obliged to pass over, free of charge, all such passengers, as are by law exempted from the payment of ferrage at ferries established by act of the legislature.—(b.)

(c)—*passim*.—See also 1744, P. L. p. 194. (e)—1818, Session Acts, p. 41.

(d)—1792, 1st Faust, p. 231. (e)—1798, 2d Faust, p. 213, and *passim*.

(h)—1807, *Session Acts*, p. 72.

## FINES.

I. The Sheriff of each district, and every justice of the peace and clerk of any court, after receiving any fine or forfeiture, shall, as soon as may be, pay the same into the public treasury, excepting such fines and forfeitures, as may be appropriated to the use of such district: and if any sheriff, or his deputy, or any clerk of a court, shall keep in his hands any monies, which shall be paid to him for any fine or forfeiture, for any space of time more than two calendar months after such monies shall have been delivered to him, he shall forfeit triple the amount of the sum so detained; and every sheriff, justice, and clerk of a court, shall cause to be kept a just and regular entry of all fines and forfeitures, that shall come into their hands, respectively; and if any fraud, or wilful failure, shall be committed by any sheriff, deputy sheriff, justice, clerk of a court, or constable, in levying, paying, or accounting for, any fine, or forfeiture, and he be thereof convicted, the offender shall forfeit triple the sum, whereof there shall be committed fraud, or failure, and be thereafter incapable to hold his office: Provided, that all forfeited recognizances, and fines imposed for trespass or misdemeanor, or for default of jurors, shall be subject to the payment of twelve dollars and eighty-five cents for every session sermon that shall be preached at any district court.—(m.)

II. All fines, penalties and forfeitures, recovered in any court of justice in this state, and not appropriated by act of Assembly, shall be paid into the public treasury.—(n.)

III. It shall be the duty of the several clerks of the courts in this state to collect and receive all fines inflicted, and forfeitures incurred in their respective courts, and to pay the same over to the treasurer of the division, in which they reside, respectively, on, or before, the first day of October in every year; and to render an account thereof to the comptroller-general, as heretofore required by law.—(o.)

IV. It shall be the duty of the attorney-general, and each of the solicitors of the different circuits, to certify to the comptroller-general, on, or before, the first Monday in October in every year, the fines and forfeitures which have been had or inflicted by the courts on his circuit within the year next preceding the day aforesaid; and it shall be the duty of each of the clerks of the several circuit court districts to return to the comptroller-general, on, or before, the first day of October in every year, an account, upon oath, of all the fines and forfeitures inflicted, had, or received, within his district, and of the manner how appro-

(m)—1787, P. L. p. 420. (n)—1769, P. L. p. 272. (o)—1820, See. Acts, p. 12.

appropriated, or remitted: and in case of failure of any clerk, to render such account, he shall forfeit and pay the sum of two hundred dollars, to be recovered in any court having jurisdiction: and it shall be the duty of the comptroller-general to direct the attorney-general, or solicitors, as the case may be, to sue for and recover the said sum of such clerk, as shall fail to render such account: and should the said attorney-general, or solicitors, not perform the duty hereby required, they shall be subject to the penalty of one hundred dollars, to be recovered in any court having competent jurisdiction.—(o.)

V. In every case where any recognizance shall be adjudged forfeited, or where any fine shall be imposed by, or recovered for the use of the state in any district court, or before a justice of the peace, if the party incurring such fine or forfeiture shall fail to pay down the same with the costs of prosecution; a writ, in nature of a writ of fieri facias, shall issue, by virtue of which the sheriff or his deputy shall sell (in the same manner as property is sold under execution in civil cases,) so much of such offenders estate, real, or personal, as may be necessary to satisfy the fine, or forfeiture, and also the costs of prosecution, and also the reasonable charges of taking, keeping and selling such property; returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he require it: But the sheriff shall sell every other part of the personal estate, before he shall sell any negro. And if the sheriff, or his deputy, return, on oath, that such offender refused to pay, or hath not any property, or not sufficient whereon to levy, then a writ of capias ad satisfaciendum shall issue, whereby he shall be committed to the common gaol, until the forfeiture, costs and charges be satisfied; entitled however to the privilege of insolvent debtors.—(p.)

### FORCIBLE ENTRY AND DETAINER

No person shall make entry into any lands or tenements, or other possessions whatsoever, but in cases, where entry is given by the law; and then, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; nor having entered peaceably, shall detain such lands, tenements or other possessions with strong hand, or force: And if any person shall do to the contrary, and be thereof duly co-

(o)—1810, Sess. Acts, p. 16. (p)—1787, P. L. p. 420.

victed, he, or she, shall be punished by fine and imprisonment, at the discretion of the court.—(d)

II. Upon complaint thereof made to any justice or justices of the peace, such justice, or justices, shall take sufficient power of the district, and go to the place, where such force is used; and all the people of the district, as well the sheriff as others, shall be bound, if required, to attend the said justices, and assist in arresting such offenders, upon pain of imprisonment and fine; and every such offender shall be committed to goal; there to remain convict by the record of the said justice, or justices, until he shall be thence delivered by a due court of law.—(g)

III. Tenant for term of years, in case his tenement shall be entered upon, or holden from him by force, shall have the same remedy, as tenants of estates of freehold or inheritance.—(m)

## FRAUDS.

No action shall be brought, whereby to charge any executor, or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant with any special promise to answer for the debt, default, or miscarriage, of another; or to charge any person, upon an agreement made upon consideration of marriage; or upon any contract for the sale of lands, tenements, or hereditaments; or any interest in, or concerning them; or upon any agreement, that is not to be performed within the space of one year from the making thereof, unless the promise, or agreement, upon such action shall be brought, or some memorandum, or note, thereof, be in writing, signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized.—(a)

II. Every gift, grant, or conveyance, of lands, tenements, or hereditaments, goods, or chattels, or of any rent, or profit, out of the same, by writing, or otherwise, and every bond, suit, judgment, or execution, had, made, or contrived, of malice, fraud, covin, collusion, or guile, to delay, hinder, or defraud creditors of their just and lawful actions, debts, accounts, damages, penalties, or forfeitures; or to defraud, or deceive those, who may purchase the same lands, tenements, or

(d)—1712, P. L. p. 37 & 73; and Appx p 5. (g)—1712, P. L. p. 37, and Appx p 5.—See also 3d Bl. Co. p. 179. (m)—P. L. p. 75. (a)—1712, P. L. p. 82.

hereditaments, or any rent, or profit, issuing thereout, shall be deemed and adjudged, as against the person, or persons, his, her, or their, heirs, successors, executors, administrators, or assigns, whose actions, debts, accounts, damages, penalties, forfeitures, estates, or interests, by such guilty or fraudulent practices and devices, shall, or might be, in any wise, disturbed, hindered, delayed, or defrauded, to be clearly and utterly void and of no effect: Provided, that nothing herein contained shall extend to any estate or interest in any lands, tenements, or hereditaments, rents, goods, or chattels, which may be conveyed upon good consideration, and *bona fide*, to any person, or persons, or body politic, not having, at the time of such conveyance, any manner of notice, or knowledge, of such covin, fraud, or collusion.—(b.)

III. Every party to such covinous or fraudulent gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, or other thing, privy to, and knowing, the same, who shall willingly put in use, avow, maintain, justify, or defend the same, or any of them, as true, and done, had, or made *bona fide*, and upon good consideration; or shall alien, or assign, any lands, tenements, goods, leases, or other things, so as aforesaid, conveyed to him, or them, or any part thereof, shall incur the penalty and forfeiture of one year's value of such lands, tenements, hereditaments, leases, rents, or other profits, of the same, and the whole value of such goods and chattels; and also, so much money, as shall be mentioned in any such feigned bond; one moiety whereof shall go to the state, and the other moiety to the party aggrieved; to be recovered in any court of record in this state, by action of debt, bill, or plaint: And the party thereof lawfully convicted, shall moreover suffer one year's imprisonment, without bail or main-prize.—(c.)

IV. No lease, estate, or interest, either of freehold, or term of years, or any uncertain interest in lands, tenements, or hereditaments, shall be at any time granted, assigned, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, granting, or surrendering the same, or his agent thereunto lawfully authorized in writing, or by act and operation of law.—(d.)

V. All leases, or contracts in writing, between landlord and tenant, for a larger term than twelve months, shall not be valid in law, against the rights and claims of third persons, unless the same shall have been recorded in the office of mesne conveyance, at court, within three months from the time of the execution thereof: nor shall any payment made in anticipation of rent for a larger period than twelve months, be

considered a valid discount against the claims and rights of third persons.—(m.)

**VII.** All declarations, or creations, of trusts or confidences, in any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party, declaring such trust, or by his last will in writing, or else shall be utterly void.—(g.)

**VIII.** Every grant, or assignment, of any trust or confidence, shall be in writing, signed, by the party granting, or assigning the same, or his lawful agent, or by last will or devise, or shall be utterly void.—(g.)

**VIII.** All wills and testaments, limitations, dispositions, and appointments, of any lands, tenements, or hereditaments, or of any rent, profit, term or charge out of the same, whereof any person, at the time of his, or her, decease, shall be seized in fee simple, in possession, reversion, or remainder, or have power to dispose, by his, or her, last will and testament, whereby any creditor might be defrauded of his just debt, claim, or demand, shall be deemed and taken, as against such creditors, their heirs, successors, executors, administrators and assigns, fraudulent, and absolutely void, and of no effect: And every creditor shall, in such cases, have his, or her, action against the heir or heirs at law of such testator; and such devisee or devisees, jointly: And every such devisee shall be liable and chargeable for a false plea by him, or her, pleaded, in the same manner, as any heir would be for any plea by him falsely pleaded; or for not confessing the lands or tenements to him descended: Provided that, where there shall be any limitation or appointment, devise or disposition, of any lands, tenements, or hereditaments, for the raising and paying of any real and just debts, or any portion or sum of money for the child, or children, of any person, according to, or in pursuance of any marriage contract, or agreement in writing, *bona fide* made before marriage, the same shall be in full force, until such debt or debts, portion or portions, shall be raised, paid, and fully satisfied.—(h.)

**IX.** In all cases, where any heir or heirs at law, shall be liable to pay the debt of their ancestor, in consideration of any lands, tenements, or hereditaments descending to them, and shall sell, alien, and make over the same, before any action brought, or process sued out against them, such heirs at law shall be answerable for such debt or debts, to the value of the lands, &c. so by them sold, aliened, and made over; in which case all creditors shall be preferred, as in actions against executors and administrators, and execution shall be taken out upon any judgment so obtained against such heir or heirs, to

(m)—1817, Sess. Acts, p. 35. (g)—Ibid, p. 83. (h)—1712, P. L. p. 87.

the value of the said lands, as if the same were his, or their, own proper debt or debts : But no lands, tenements, or hereditaments *bona fide* aliened before action brought, shall be liable to such execution.—(m.)

X. If judgment be given against any heir by confession of the action, without confessing the assets descended; or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to enquire of the lands, &c. so descended.—(m.)

XI. Every devisee made liable, as aforesaid, shall be chargeable in the same manner, as the heir or heirs at law would be, notwithstanding the lands, tenements, &c. devised, shall be aliened before action brought.—(m.)

XII. Estates of every kind, holden or possessed in trust, shall be subject to like debts and charges of the persons, to whose use, or for whose benefit, they shall be, respectively, holden or possessed, as they would be subject to, if such persons owned the like interest in the things holden or possessed, as they own in the uses or trusts thereof.—(n.)

XIII. Judgments, as against purchasers *bona fide* for valuable consideration, of lands, tenements, or hereditaments, to be charged thereby, shall in consideration of law, be judgments only from such time as the same shall be regularly entered up, and shall not relate to the first day of the term, whereas they are entered : And every officer who shall sign any judgment in any of the courts of this state, shall, at the time of signing the same, without fee or reward for so doing, set down the date thereof, upon the proper book, docket, or record, which he shall sign ; which day of the month and year, shall also be entered up on the margin of the record, where the said judgment shall be entered.—(n.)

XIV. No writ of *scerifacina*, or other execution, shall bind the property of the goods, against which such execution is sued forth, but from the time, that such writ shall be delivered to the sheriff, or other officer, to be executed ; and for the better manifestation of the said time, such sheriff, or other officer, shall upon the receipt of such writ, endorse upon the back thereof, the day of the month, and year, when he received the same ; and if two, or more, writs shall be received against the same person, that, which was first delivered, shall be first satisfied.—(o.)

XV. No recognizance shall bind any lands, tenements, or hereditaments, in the hands of any *bona fide* purchaser for valuable consideration, but from the time of recording the same.—(o.)

(m)—1712, P. L. p. 87. (n)—ibid, p. 83. Decrees on summary process have the effect of other judgments, on executions levied in like manner as other executions. 1793, 1st Faust, p. 290. (o)—1712, P. L. p. 84.

**XVI.** No contract for the sale of any goods, wares or merchandise, for the price of forty-two dollars and eighty-six cents, or upwards, shall be allowed to be good, unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or some note, or memorandum, in writing, of the said bargain, be made and signed by the parties to be charged by such contract, or their lawful agents.—(o.)

Fraud is never to be presumed: but must be proved positively, or from strong unequivocal circumstances! *Monroe vs. Gardner*, 1 Mill, 328, and *Kinlock vs. Palmer*, *Ibid.* 224. Where the vendor of personal property continues in possession after the sale, as if he were owner, the sale is to be considered fraudulent, and void against creditors—*Kenney vs. Ross*, 2 Mill, 125.

## FREE SCHOOLS.

There shall be established, in each election district of this state, a number of free schools equal to the number of members, which such district is entitled to send to the house of representatives in the legislature of this state.—(a.)

**II.** In each of these schools, the primary elements of learning, reading, writing, and arithmetic, shall always be taught, and such other branches of education, as the commissioners to be herein after appointed, may, from time to time direct.—(a.)

**III.** Every citizen of this state shall be entitled to send his, or her, child, or children, ward, or wards, to any free school in the district, where he, or she, may reside, free from any expence whatsoever on account of tuition; And where more children shall apply for admission at any one school, than can be conveniently educated therein, a preference shall always be given to poor orphans, and the children of indigent and necessitous parents.—(a.)

**IV.** For the support and maintenance of the said free schools, the sum of three hundred dollars, per annum, for each school, is hereby, and for ever, appropriated, to be paid out of the treasury of this state, in the manner herein after directed, until other sufficient funds may by law be provided.—(b.)

**V.** There shall be appointed a number of commissioners in each election district, which number shall not be less than three, nor more than thirteen.—(b.).

**VI.** The said commissioners shall be appointed by the legislature, by nomination, and shall continue in office for three

(o)—1713, P. L. p. 84. (a)—1811, Sec. Acts, p. 27. (b)—*Ibid.*, p. 28.

years from the time of their appointment, and until a new appointment shall be made.—(b.)

VII. The said commissioners shall have power to determine the situation of the schools in each district, to appoint masters for each school, and to remove them at pleasure, to arrange the system of instruction, until some general system be organized, to decide on the admission of scholars, and the preference to be given in all cases of doubt or difficulty, and to superintend, generally, the management of schools in their respective districts.—(b.)

VIII. Whenever the commissioners, or a majority of them, in any district, shall be of opinion, that the objects of this act would be better promoted by increasing, or diminishing, the number of schools allowed to such district, the said commissioners shall have power to increase, or diminish, the number thereof, and to draw for, and apply the whole amount allowed by this act, to such district, to the support of the schools so increased, or diminished, in number. —(b.)

IX. The commissioners in each district shall meet together, annually, on the fourth Monday in January in each year, and, quarterly, on the fourth Mondays of April, July, and October; and at their anniversary meetings, shall, annually, elect a chairman, and secretary, and shall fill up the vacancies, which may have happened in their board: And on the death, resignation, or absence from the state, of the chairman, or secretary, of any board of commissioners, the members, at the next quarterly meeting, provided a majority be present, shall appoint a successor.—(c.)

X. The secretary of each board of commissioners shall keep a regular journal of the transactions of the said board, which shall be always open to the inspection of the legislature.—(c.)

XI. In all cases, where the sum of money allotted by this act for the support of each school shall be found insufficient to maintain a master for the whole year, the commissioners shall be authorized to employ a master the greatest length of time, for which a competent person can be engaged.—(c.)

XII. Every board of commissioners shall, at their quarterly meeting on the fourth Monday in October in each year, make a regular return to the legislature, or to any person, whom the legislature may appoint, of the number of months during the year preceding their said meeting, which each school, in their respective districts, has been open for the reception of scholars; of the number of scholars that, during each quarter, attended the schools; of the sums drawn for on account of each school, with the date of the draft: And may transmit any observations

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(b)—1811, Sess. Acts, p. 28. (c)---ibid, p. 29.

on the state, or regulations of the schools, which may appear to them necessary or important.—(c.)

XIII. As soon as the commissioners of each district shall have located their respective schools, they shall designate each school by number, or by name, and give notice thereof to the comptroller of the treasury of the state; and every order drawn for money appropriated by this act, for the support of each school, shall be signed by the chairman and secretary of the board of commissioners for the district, in which such school may be situated; shall express, by name, the school, on account of which the order shall be drawn, and shall not be for a smaller sum than seventy-five dollars, unless, on the death, resignation, or removal, of an instructor, the sum so drawn for shall be the whole amount which may be due.—(g.)

XIV. Until the number of schools established by the state shall be sufficient to educate the children in every part of each district, the commissioners shall be authorized and required, if they think it expedient and necessary, to remove the schools annually, into different parts of their respective districts: Provided nevertheless, that no school shall be established in any part of any district, unless the inhabitants shall, at their own expense, provide a sufficient school house for the accommodation of the scholars.—(g.)

XV. In all districts, where a school, or schools, are already, or may hereafter be, established by private funds, or individual subscription, it shall be lawful for the commissioners of the free schools, at their discretion, to unite such part or parts of the funds provided by this act, for such districts, with such school, or schools, in such manner, as may appear to them best calculated to promote the objects of this act.—(h.)

XVI. The number of commissioners of free schools in each election district throughout the state, shall be as follows, viz: For St. Philips and St. Michaels, thirteen; for St. John's, Colleton, five; for Prince Williams, five; for Winyaw, nine; for All Saints, three; for St. James, Goose-creek, three; for St. Paul's, five; for Williamsburg, five; for Kingston, three; for St. Helena, five; for St. Luke's five; for Barnwell, seven; for Clarendon, five; for Chesterfield, three; for Edgefield, thirteen; for Greenville, nine; for Saxe-gotha, five; for Lewisburg, three; for Marlborough, five; for Orange, five; for Richland, five; for Union, seven; for St. Andrew's three; for St. Peter's, five; for St. Stephen's three; for Liberty, five; for St. James, Santee, five; for St. John's, Berkley, seven; for St. George, Dorchester, three; for St. Bartholomews, nine; for St. Thomas and St. Dennis, three; for Christ Church, three; for Abbleville, eleven; for Chester, seven; for Claremont, seven; for Darling-

(c)—18th, Sess. Acts, p. 23.

(g)—Ibid, p. 30.

(h)—Ibid, p. 31.

ton, five; for Fairfield, nine; for Kershaw, five; for Lancaster, five; for Laurens, nine; for Newberry, nine; for Pendleton, thirteen, for Spartanburg, nine; for York, seven.—(h.)

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### GAMING.

If any person shall inveigle or entice, by any arts or devices, any other person to play at cards, or dice, or any other game, or bear a share, or part in the stakes, wagers, or adventures; or bet on the sides, or hands of such, as shall play, as aforesaid; or shall sell, barter, or expose to sale, any kind of property, which has been before sold, bartered, or exchanged by the person so selling, bartering, or exchanging, or by any person, or persons, to him, or their, benefit or advantage, so selling, bartering or exchanging, at any house, or other place within the state, or be a party thereto, or overreach, cheat or defraud, by any other, cunning, swindling arts and devices, that in the ignorant and unwary, who are deluded thereby, lost their money or other property, every such person exercising such infamous practices, shall, on conviction thereof in any court of this state exercising criminal jurisdiction, by trial by jury, be deemed guilty of enticing, inveigling, defrauding, and swindling, and shall forfeit a sum at the discretion of the court and jury, besides refunding to the party aggrieved double the sum he was so defrauded of: and if the same be not immediately paid with costs, every such person shall be committed to the common gaol, or house of correction of the district, where such person shall be convicted, there to continue for any time not exceeding six months, unless such fine and costs be sooner paid and discharged.—(a.)

IL Upon complaint made to any justice of the peace within the state, of any person, or persons, having defrauded the party complaining, by inveigling, enticing, or any swindling practices, as aforesaid, he shall issue his warrant, directed to any lawful constable, or sheriff, who shall thereupon apprehend such person, or persons, and bring him, or them, before any one of the justices of the peace of the state, with the cause of his detention, who shall, thereupon, hold the party so brought before him to bail, with one, or more sufficient sureties, to appear at the first court of the district, having jurisdiction to try such cause, that shall happen thereafter, and answer to any indictment to be then filed against him or them by the party so in-

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(b)—Sess. Acts, p. 31. (a)—1791, 1st Faust, p. 79.

juror; but if such person, or persons, refuse to give bail as aforesaid, the said justice of the peace shall commit him, or them, to the common gaol of the district, in which the complaint is made, there to remain until the next sitting of the said court, then to be brought up for trial.—(b.)

III. Every keeper or exhibitor of either of the gambling tables commonly called A. B. C. or E. O. or of any other table distinguished and known by any other letters, or by any figures, rowley powley, or rouge and noir, or of a faro bank, or of any other table of the same, or the like kind, under any other denomination whatsoever, shall be deemed and rated as a vagrant: And it shall be lawful for any justice of the peace, by warrant under his hand, to order any such gaming table to be seized, and publicly burnt or destroyed.—(c.)

IV. All notes, bills, bond, judgments, mortgages, or other securities, or conveyances whatsoever, given, granted, or entered into, or executed by any person, or persons, whatsoever, where the whole, or any part of the consideration of such conveyances, or securities, shall be for any money, or valuable thing whatsoever, won by cock-fighting, horse-racing, or by gaming, or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever; or by betting on the sides, or hands, of such as do game, at any of the games aforesaid, or any other game, or games; or for the reimbursing or repaying of any money knowingly lent or advanced at the time and place of such cock-fighting, horse-racing, or play, to any person, or persons, so gaming or betting as aforesaid, or that shall, during such cock-fighting, horse-racing, or play, so play, or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever: And where such mortgages, securities, or other conveyances, shall be of lands, tenements, or hereditaments, or shall be such, as to encumber or affect the same, such mortgages, securities, or other conveyances, shall enure, and be to and for the sole use and benefit of, and shall devolve upon, such person or persons, as shall have been, or may be entitled to such lands, tenements, or hereditaments, in case the said grantor, or grantors, thereof, or the person or persons so encumbering the same, had been dead, and as if such mortgages, securities or other conveyances, had been made to such person, or persons, by the person, or persons, so encumbering the same: And all grants and conveyances to be made for the preventing of such lands, tenements, or hereditaments, from coming to, or devolving upon such person, or persons, hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever.—(d.)

(b)—1791, 1st Faust, p. 80. (c)—1802, 2d Faust, p. 447-8. (d)—1792  
1st Faust, p. 81.

V. If any person shall, at any time or sitting, by playing at cards, dice, table, or other game whatsoever, or by betting on the sides, or hands, of such as do play, at any game, lose, to any one or more persons so playing or betting, in the whole, the sum or value of forty-two dollars and eighty-five cents, and shall pay or deliver the same, or any part thereof, the person so losing and paying or delivering the same, shall be at liberty, at any time within three months, to sue for and recover the money or goods so lost and paid, or delivered, or any part thereof, from the respective winners thereof, with costs of suit, by action of debt, to be prosecuted in any court of record; in which action no protection or privilege, nor more than one imparlance, shall be allowed: And it shall be sufficient for the plaintiff to alledge that the defendant is indebted to him, or received to his use the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action had accrued to him according to the form of this statute, without setting forth the special matter: And if the person who shall have lost such money, or other things, as aforesaid, shall not, within the time aforesaid, really and bona fide, without covin or collusion, sue and effectually prosecute for the money or other thing by him lost, and paid or delivered, as aforesaid; it shall be lawful for any person, by such action or suit as aforesaid, to sue for and recover the same, and triple the value thereof, with costs of suit, against such winner, or winners, as aforesaid; one moiety thereof to the use of the person who shall sue for the same, and the other moiety to the use of the poor of the parish, or district, where the offence shall be committed: Provided that, upon the discovery and re-payment of any money or other thing so paid or delivered, as aforesaid, the person so discovering and re-paying, shall be acquitted and discharged from any further, or other punishment, or forfeiture.—(g.)

VI. If any person do, by fraudulently playing with cards, dice, or any other game, or bearing a share or part in the stakes, wagers, or adventures, or betting on the sides or hands of such as do play as aforesaid, win, obtain, or acquire, to himself, or any other person, or persons, any sum of money, or valuable thing whatsoever; or do, at any one time or sitting, win of any one or more persons, above the sum or value of forty-two dollars and eighty-five cents, every person so fraudulently winning, or winning at any one time or sitting, above the sum or value of forty-two dollars and eighty-five cents, upon conviction of any of the said offences by indictment, shall forfeit five times the value of the money, or other thing won, as aforesaid; and in case of such ill practice, or fraud, as aforesaid, shall be

deemed infamous, and suffer as in case of wilful perjury; such penalty to be recovered by any person, who will sue for the same, by action of debt, as aforesaid.—(h.)

VII. If any person shall assault or beat, or shall challenge, or provoke to fight, any other person whomsoever, on account of any money won by playing, or betting, at any of the games aforesaid, he shall, upon conviction thereof by indictment, suffer two years' imprisonment in the common gaol of the district, where such conviction shall be had.—(h.)

VIII. If any person, or persons, shall play at any tavern, inn, store for the retailing of spirituous liquors, or in any house used as a place of gaming, or in any barn, kitchen, stable, or other out-house, or in any street, highway, or in any open wood, rice-field, or open place, at any game, or games, with cards or dice, or at any gaming table, called A. B. C. or E. O. or any gaming-table known or distinguished by any other letters, or by any figures, or rowley powley table, or at rouge and noir, or at any faro bank, or at any other table, or bank of the same, or the like, kind, under any denomination whatsoever (except the games of billiards, bowls, backgammon, chess, draughts, or whist, when there is no betting on the said games of billiards, bowls, backgammon, chess, or whist) or shall bet on the sides, or hands, of such as do game, any justice of the peace, or of the quorum, may, upon view, or information, upon oath, before him, bind over, to appear at the next court of sessions for the district, in which such play shall be carried on, all and singular the said person or persons, who shall so play, or bet, and shall require him or them to give good and sufficient security for his, or their, appearance thereto; and on his, or their failing to give such security, shall commit, him or them, to the common gaol of the said district; and shall also bind over the keeper, or keepers, of taverns, inns, stores for the retailing of spirituous liquors, public places, or houses used as a place of gaming, or other public house, to appear at the ensuing court of sessions; and every person, or persons, so playing, or betting on the sides or hands of such as do game, upon being convicted thereof upon indictment, shall be imprisoned for a period not exceeding twelve months, and shall forfeit a sum not exceeding five hundred dollars; one half to the use of the state, and the other half to the use of the informer, upon conviction of such offence; and every person so keeping such tavern, inn, retail store, public place or house used as a place for gaming, or such other public house, shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months, and forfeit a sum not exceeding two thousand dollars, for each and every offence; one half thereof to the use of the state, and the other half to the use of the informer.

**X.** Any person, or persons, who shall set up, keep, or use, any gaming table, commonly called A. B. C. or E. O. or any gaming table known or distinguished by any other letters, or by any figures, or rowley powley table, or table to play at rouge and noir, or any faro bank, or any other gaming table or bank of the like kind, or of any other kind, for the purpose of gaming, (except the games of billiard, bowls, chess, draughts, backgammon) upon being convicted thereof, upon indictment, shall forfeit a sum not exceeding five hundred dollars and not less than two hundred dollars. And each sheriff, deputy sheriff, coroner, and their deputies, and every justice of the peace, and of the quorum, and all constables, shall, before they be qualified to act in their, and each of their, respective offices, in addition to their respective oaths of office, take an oath to enforce, and to the extent of their power and ability, carry into effect, this act; and in all cases to bring to justice, violations of the same, wherever such violations shall come within their view and knowledge.

**X.** Upon conviction of every person, or persons, under, and by virtue of this act, the court, before whom such conviction shall take place, shall commit such offender to the common gaol of the district, where such conviction shall happen, for a period not exceeding twelve months, unless such offender shall sooner pay the fine, or fines, hereby imposed, together with the costs of prosecution.

**XI.** It shall not be lawful for the commissioners of the roads, or any corporation, or other persons having power to grant licenses for the retailing of spirituous liquors, to grant a license to any person, or persons whomsoever, which shall be, or may have been convicted of any of the offences enacted by this act: And every such license is hereby declared to be null and void, and shall not be received in evidence upon an indictment for retailing spirituous liquors without license.

**XII.** All and every sum and sums of money staked, betted, or pending on the event of any such game, or games, are hereby declared to be forfeited, one half thereof to the state, and the other half to the informer, or person seizing the same.

**XIII.** Any state magistrate, the intendant, or any of the wardens of the city, or the city marshal, of Charleston, on information, by oath, of any credible witness, of such offences existing, shall be authorized to grant his warrant, under hand and seal, to break open, and enter any closed door or room, wherever the said offences are alledged to prevail.

**XIV.** All and every person and persons, who might be subject and liable to the fines and penalties imposed by this act, either for gaming at, or keeping, a gaming table, or tables, shall, upon being permitted by the attorney, or any solicitor, to become evidence in behalf of the state, be freed and exonerated

from the same, and shall, besides, be entitled to one half of the fines received from any individual upon his, or their, information.—(a.)

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### GRIST-MILLS.

No person shall take more toll for grinding corn, wheat, rye, or any other grain, into good meal, or flour, than one eighth part for any quantity under ten bushels; and for ten bushels, or any quantity above, at one time brought, one tenth part only; and for all grain, as aforesaid, chopped for hominy, feeding stock, or for distilling, one-sixteenth part. And every person taking more toll, than hereinbefore directed, shall be subject to pay a fine, to the amount of ten times the value of the toll so taken, to be recovered in the most summary way, before the nearest magistrate; one half to the prosecutor, and the other half to the person aggrieved.—(b.)

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### GUARDIAN AND WARD.

WHERE any person shall have a child, or children, under the age of twenty-one years, and unmarried at the time of his death, it shall be lawful for the father of such child, or children, whether born at the time of the decease of the father, or his wife at that time shall be with child, or whether such father shall be under the age of twenty-one years, or of full age, by his deed executed in his lifetime, or by his last will and testament in writing, in the presence of two, or more, credible witnesses, in such manner, and from time to time, as he shall think fit, to dispose of the custody and tuition of such child, or children, for and during such time, as such child, or children shall respectively remain under the age of twenty-one years, to any person, or persons, in possession or remainder: And such disposition of the custody of such child, or children, shall be good and effectual against all and every person and persons claiming the custody of such child or children, as guardians in soccage, or otherwise: And such person, or persons, to whom the custody of such child, or children, shall be disposed, or devised, as aforesaid, shall and may maintain an action of ravishment of

(a)—1816, Sess. Acts, p. 7, &c. (b)—1785, P. L. p. 327.

ward, or trespass, against any person, or persons, who shall wrongfully take away, or detain, such child, or children, for the recovery of such child, or children, and recover damages for the same, in the said action, for the use and benefit of such child or children.—a.

II. All and every person and persons, to whom the custody of any child, or children, shall be disposed or devised, shall and may take into his, or their, possession, for the use of such child, or children, the profits of all lands, tenements, and hereditaments of such child, or children, and also the custody, direction and management of the goods, chattels, and personal estate of such child, or children, till their respective ages of twenty-one years, or any less time, according to such disposition aforesaid; and may bring such action, or actions, in relation thereto, as by law, a guardian in common socage might do.—(a.)

III. If any coparcener, joint-tenant, or tenant in common, who shall have arrived to the age of, twenty-one years, shall not, within twelve months thereafter, apply to the court of common pleas for a writ of partition to divide the lands so held in coparcenary, joint tenancy, or tenancy in common, (where no provision is made by will or otherwise, for dividing the same) then the guardian, or guardians, of him, her, or them, under age, shall apply to the said court for such writ of partition: And such proceedings shall be thereupon had, as if such application had been made by any party interested, of full age.—(b.)

IV. All guardians and trustees, who have the care, management, or custody of the estates, real, or personal, of any infants or minors in this state, shall be obliged, once, at least, in every three years, to render upon oath, into the secretary's office, true and perfect inventories and accounts of all monies, goods, chattels, and effects, which they shall, from time to time receive, during the minority of such infants.—(c.)

V. The commissions allowed to guardians and trustees, shall be divided amongst them, in the proportion of the services by them, respectively, performed, to be rated and settled, if such guardians and trustees cannot agree, by the senior justice and two associate justices of the court of common pleas,—(d.)

VI. If any guardian, or trustee, who shall have had extraordinary trouble in the management of the estates under their care, shall not be satisfied with the commissions allowed by law, they shall be at liberty to bring an action in the court of common pleas for compensation for their services; and the verdict

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(a)—1748, P. L p 217. (b)—1748, P. L. p. 218; 1st Faust, p. 27. and P. L. p. 408; 2d Faust, p. 315. (c)—1748, P. L. p. 202. (d)—Ibid. p. 203—allowed same compensation as executors and administrators; see Grincke's law of executors, p. 90.

of the jury and judgment of the court thereupon shall be final in such cases: Provided that no judgment shall be given for more than five per cent. over and above the sums allowed by law.—(d.)

VII. Every guardian, or trustee, of any infant having any estate in land determinable upon any life, or lives, who after the determination of such particular estates, without the consent of the person next entitled, shall hold over, and continue in possession of such lands, shall be adjudged a trespasser.—(g.)

VIII. Every person who shall have any claim or demand in, or to, any remainder, reversion, or expectancy in any estate, after the death of any person within age, married woman, or other person whatsoever, upon affidavit made in the court of equity, by the person so claiming such estate, of his, or her title, and that he, or she, hath cause to believe, that such minor, married woman, or other person, is dead, and that his, or her, death is concealed by such guardian, trustee, husband, or other person, shall and may, once a year, if the person aggrieved shall think fit, move any of the judges of the said court of equity to order, and the said judges are hereby authorize and required to order, such guardian, trustee, or other person concealing, or suspected of concealing such person, at such time and place as the said court shall direct, on personal or other due service of such order, to produce and shew, to such person and persons, not exceeding two, as shall in such order, be named by the party prosecuting such order, such minor, married woman, or other person, suspected of being concealed, as aforesaid: And if such guardian, trustee, husband, or other person as aforesaid, shall refuse or neglect to produce and shew such infant, married woman, or other person, on whose life any such estate doth depend, according to the directions of the said order, then the said court of equity shall order such guardian, trustee, husband or other person, to produce such minor, married woman, or other person concealed, in the said court of equity, or otherwise, before commissioners to be appointed by the said court, at such time and places as the court shall direct; two of which commissioners shall be nominated by the party prosecuting such order, at his, or her, costs and charges. And in case such guardian, trustee, husband, or other person shall refuse, or neglect to produce such infant, married woman, or other person so concealed, in the said court of equity, or before such commissioners, whereof return shall be made by such commissioners, and that return filed in the office of the said court, then the said minor, unmarried woman,

(d)—1745, P.L. p. 203—allowed same compensation as executors and administrators; see Grunke's law of executors, p. 90. (g)—1712, P. L. Appz. p. 20.

or other person so concealed, shall be taken to be dead ; and it shall be lawful for the party claiming such right, title, or interest in remainder or reversion, or otherwise, after the death of such infant, married woman, or other person, so concealed as aforesaid, to enter upon such lands, tenements or hereditaments, as if such infant, married woman, or other person so concealed were actually dead.—(g.)

IX. If it shall appear to the said court by affidavit, that such minor, married woman, or other person, for whose life such estate is holden, is, or lately was, at some certain place beyond the limits of this state, it shall be lawful for the party or parties prosecuting such order as aforesaid, at his, her, or their, costs and charges, to send one, or both, the said persons appointed by the said order, to view such minor, married woman, or other person, for whose life any such estate is holden ; and in case such guardian, trustee, husband, or other person concealing, or suspected of concealing such person as aforesaid, shall refuse or neglect to produce, or procure to be produced, to such person, or persons, a personal view of such infant, married woman, or other person, for whose life any such estate is holden, then such person, or persons, shall make a true return of such refusal or neglect, to the court of equity, which return shall be filed in the office of the register of the said court, and thereupon such infant, married woman, or other person, for whose life such estate is holden, shall be taken to be dead ; and it shall be lawful for any person claiming any right, title, or interest in remainder, reversion, or otherwise, after the death of such infant, married woman, or other person, for whose life any such estate may be holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, for whose life such estate is holden, were actually dead : Provided, always, that if it shall afterwards happen, upon proof, in any action to be brought, that such infant, married woman, or other person, for whose life any such estate is holden, were alive at the time of such order made, theirit shall be lawful for such infant, married woman, guardian, or trustee, or other person having any estate or interest, determinable upon such life, to re-enter upon the said lands, tenements, or hereditaments, and for such infant, married woman, or other person having any estate or interest, determinable upon such life, their executors, administrators or assigns, to maintain an action against those, who, since the said order, received the profits of such land, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same, received from the time that such infant, married woman, or other person

Having such estate or interest, determinable upon such life, were ousted of the possession of such lands, tenements, or hereditaments: And provided also, that if any such guardian, trustee, husband, or other person, or persons, having any estate or interest determinable upon the life, or lives, of any other person, or persons, shall, by affidavit or otherwise, to the satisfaction of the said court of equity, make appear, that he, she, or they, have used his, her, or their, utmost endeavors to procure such infant, married woman, or other person, or persons, on whose life or lives such estate or interest doth depend, to appear in the said court of equity, or elsewhere, according to the order of the said court, in that behalf made; and that he, she, or they, cannot procure or compel such infant, married woman, or other person, or persons, so to appear, and that such infant, married woman, or other person, or persons, on whose life or lives such estate or interest doth depend, is, are, or were, living at the time of such return made and filed, as aforesaid, then it shall be lawful for such person, or persons, to continue in the possession of such estate; and receive the rents and profits thereof, for and during the infancy of such infant, and the life, or lives, of such married woman, or other person, or persons, on whose life, or lives, such estate or interest doth, or shall, depend.—(S.)

**HABEAS CORPUS.**

If any person shall be committed, or detained for any crime, unless it be for treason, or felony plainly expressed in the warrant of commitment, in vacation time, or out of term, the prisoner (not being convict, or in execution by legal process,) or any one, in his behalf, may appeal or complain to any judge of the superior courts of law, or equity, or any two justices of the peace, one whereof to be of the quorum; and such judge or justice, upon view of a copy of the warrant of commitment and detainer, or otherwise, upon oath made that such copy was desired to be given by the person having the custody of the prisoner, shall, upon request made in writing by such prisoner, or any other person in his, or her, behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, award and grant, under the seal or seals of such judge or justices, an *habeas corpus*, to be directed to the officer, or officers, in whose custody the prisoner shall be detained, returnable imme-

dately before the same, or any other judge or justices: and upon service thereof, the officer, or his deputy, in whose custody the party is so committed or detained, shall, within the times respectively hereinbefore limited, bring such prisoner before such judge or justices, before whom the said writ was made returnable, and in case of his or their absence, before any other Judge or justices, with the return of such writ, and the true causes of the commitment and detainer.—(m.)

II. Whenever any writ of *habeas corpus*, directed to any sheriff, gaoler, or other person, shall be served upon such officer, or left at the gaol or prison with any under officer, or deputy, such officer, under officer, or deputy, shall, within three days after the service thereof, as aforesaid, (unless the commitment were for treason or felony plainly and specially expressed in the warrant of commitment,) upon payment, or tender, of the charges of conveying the said prisoner, to be ascertained by the judge, or justices, who awarded the same, and endorsed upon the writ, not exceeding twenty-one cents and four mills per mile, and upon security given by his own bond to pay the charges of conveying back the prisoner, if he shall be remanded, and that he will not escape by the way, make return of such writ; and bring, or cause to be brought, the body of the prisoner before the proper court, judge, or justices, according to the commandment thereof, and shall then likewise certify the true causes of his detainer or imprisonment, if the commitment of the prisoner be at any place within twenty miles; but if it be at a place beyond the distance of twenty, and not more than one hundred, miles from the place where such court, judge, or justices shall be residing, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days from the time of such service, and not before.—(n.)

III. When any prisoner shall be brought before any judge, or justices, by virtue of a writ of *habeas corpus*, as aforesaid, such judge, or justices, shall discharge the prisoner from his imprisonment, taking his, or her, recognizance, with one, or more, sureties, in any sum, at discretion, having regard to the quality of the prisoner, and the nature of the offence, for his, or her, appearance at the court of sessions next to be holden for the district, where the offence was committed, or is properly cognizable; and shall then certify the said writ and the return thereof, together with the said recognizance, to the court, where the appearance is to be made; unless it shall appear to the said judge, or justices, that the party is so detained upon a legal process, order, or warrant out of some court, that hath jurisdiction of criminal matters, or upon some warrant signed and seal-

(m)—1712, P. L. D. 32. (n)—1713, P. L. p. 21.

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• by any of the aforesaid judges, or justices, for some matter, or offence, for which, by law, the prisoner is not bailable : Provided always, that, if any prisoner shall have wilfully neglected, for the space of two whole terms, after his imprisonment, to pray a habeas corpus for his enlargement, such person shall not be entitled to such writ to be granted in vacation time.—(a)

IV. No person charged in debt, or other action, or with process in any civil cause whatever, shall be discharged from his imprisonment on such account, in consequence of any proceedings [under the foregoing section ;] but if discharged from confinement for his criminal offence, he shall nevertheless be detained in custody, according to law, under such civil process.—(b.)

V. Any prisoner may move for and obtain a writ of habeas corpus out of the court of sessions and common pleas, in term time, or out of the court of equity : And if any judge, or justice, authorized to issue such writ in vacation time, upon view of a copy of the warrant of commitment and detainer, or upon oath made that such copy was denied, as aforesaid, shall wilfully deny such writ to any person legally entitled to demand the same, he shall forfeit, to the prisoner or party grieved, the sum of two thousand one hundred and forty-three dollars, to be recovered in any court of record in this state, having jurisdiction.—(b.)

VI. Any officer wilfully neglecting or refusing to make the return aforesaid, or to bring the body of the prisoner according to the command of the writ, within the respective times aforesaid, or not delivering a true copy of the warrant of commitment and detainer within six hours after demand thereof made, to the prisoner, or person demanding it on his behalf, (which copy the officer and his deputy are commanded to deliver) shall lose his place, or office, and forfeit to the prisoner or party grieved, for the first offence, the sum of four hundred and twenty-eight dollars and sixty cents ; and for the second offence, the sum of eight hundred and fifty-nine dollars, and be rendered incapable to hold or exercise his said office ; the said penalties to be recovered by action of debt, bill, or plaint, in which no privilege, injunction, or stay of prosecution, nor more than one imparlance, shall be allowed ; and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction of the first offence ; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officer, or person, within the said penalty for the second offence.—(c.)

VII. No person, who shall have been delivered upon a habeas corpus, shall afterwards be committed or imprisoned for

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(a)—1712, P. L. p. 22. (b)—Ibid, p. 23. (c)—Ibid, p. 23.

the same offence, otherwise than by the order, or process, of the court, wherein he shall be bound by recognizance to appear, or some other court having jurisdiction of the cause; and if any other person shall knowingly, contrary thereto, re-commit, or cause to be re-committed, (or be aiding or assisting therein,) any person delivered, as aforesaid, for the same offence, or pretended offence, he shall lose his place or office, and forfeit to the party grieved, the sum of two thousand one hundred and forty-three dollars, to be recovered, as aforesaid, any colourable pretence, or variation, in the warrant of commitment, notwithstanding.—(c.)

**VIII.** No citizen of this state, committed to prison, or in custody of an officer, for any criminal matter, shall be removed from such prison or custody, into the custody of any other officer, unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to a constable or other inferior officer, to be carried to some common gaol; or where any person is sent by order of any judge, or justice of the peace, to any common work house, or house of correction, or where the prisoner is removed from one prison or place to another, in order to his, or her, trial, in due course of law; or in case of sudden fire, or infection, or other necessity: And if any person shall, after such commitment as aforesaid, wilfully make out and sign, or countersign, any warrant for such removal, such person, as well as the officer that obeys or executes the same, shall suffer and incur the pains and forfeitures hereinbefore mentioned, for the first and second offence, respectively, to be recovered in manner aforesaid, by the party grieved.—(d.)

**IX.** If any action be commenced for any offence against this act, the defendant may plead the general issue, and give special matter in evidence.—(g.)

**X.** Every person to whom any power, judicial or ministerial, is hereby before given, who shall wilfully neglect to do any thing hereby required of him, shall, for every such neglect, forfeit the sum of four hundred and twenty-eight dollars and sixty cents, and suffer such penalties, as by the habeas corpus act are appointed for such officer, magistrate, or other person: Provided that no person shall be prosecuted for any of the offences aforesaid, but within two years after the commission of such offence, if the party grieved be not in prison; but if the party be in prison, then within the space of two years after his, or her, delivery out of prison, or decease, which shall first happen.—(g.)

**XI.** Every sheriff, gaoler, or other person, having the keeping of any prison or gaol in this state, shall give due obedience in the execution of every writ of habeas corpus made or signed

(c)—1712, D. L. p 22. (d)—Ibid, p. 23. (g)—Ibid, p. 24.

by any person, or persons, lawfully authorized to grant the same, and do and perform every matter or thing required by the said writ.—(b.)

## HAWKERS AND PEDLARS.

No hawker or pedlar shall be allowed to expose any goods, wares, or merchandize, to sale, in any part of this state, until he shall have procured a license, in his own name, from the treasurer thereon, for that purpose; and such license shall not be transferred, so as to give any agent or deputy the privilege of selling under the said license; and every hawker or pedlar shall pay for such license, for the support of the government of this state, the sum of two hundred and fifty dollars per annum; (o) one moiety whereof shall be paid to the state treasurer at the time of obtaining the said license, and the other moiety secured by bond, with one, or more sufficient sureties, and made payable to the said treasurer, for the use of the state, at the end of six months thereafter.—(a.)

If any hawker or pedlar shall presume to expose any goods, wares, or merchandize, to sale, contrary to the true intent and meaning of this act, he shall, for every such offence, forfeit and pay to the treasurer aforesaid, the sum of five hundred dollars; one moiety thereof to go to the informer, and the other moiety to the use of the state, to be recovered in any court having competent jurisdiction.—(b.)

No two or more pedlars shall be suffered to expose to sale any goods, wares or merchandize, under one and the same license, under the forfeiture, pains, and penalties aforesaid.—(b.)

Upon the receipt of the money, and security given, as aforesaid, the said treasurer shall grant a license, to be by him subscribed, to every such hawker, pedlar, or petty chapman, or any other trading person, for him, or herself, with one, or more, horses, mules, or other beasts, pettiaugus, canoes, or other vessels, with which he, or she, shall travel: for the writing and subscribing of which license, there shall be taken only the sum of sixty cents.—(g.)

If any hawker, pedlar, petty chapman, or other trader, licensed as aforesaid, shall buy, sell, bargain, contract, barter, give, lend, or exchange any manner of goods or commodities,

(b)—1712, P. L. p. 23. (o)—1797, 2d Faust, p. 151. (a)—1738, P. L. p. 152. (b)—1797, 2d Faust, p. 152. (g)—1738, P. L. p. 152.

to, for, or with, any slave, indentured servant, or overseer, without the privity or consent of his, or her, master, or mistress, he, or she so offending, shall forfeit his or her security bond, and be deemed incapable of taking a license for the future.—(g.)

**VI.** Every hawker, pedlar, or petty chapman, who upon demand made by any justice of the peace, constable, or officer of the district or town, where he, or she, shall trade, shall refuse to produce a shew to such justice, or other officer of the peace, his, or her, license for so trading, to be granted as aforesaid, shall forfeit the sum of sixty dollars, (p.) to be paid to the commissioners of the poor of the election districts, respectively, where such offence is committed: (q.) and for non payment thereof, shall suffer as a common vagrant, and be imprisoned, until such forfeiture be paid and satisfied.—(g.)

**VII.** It shall be lawful for any person or persons to seize and detain any hawker, pdilar, or petty chapman, or other trading person, with his goods and merchandise, and the boat or carriage, in which the same may be, until he, or she, shall produce a license in that behalf, if he, or she, have one; and if he, or she, shall be found trading without a license, then such pedlar, or other trading person, may be detained for such reasonable time, as may be necessary to give notice to some constable, or commissioner of the poor, or other officer, who shall carry such person so detained, before some justice of the peace for the parish, or district, where such offence is committed, to be dealt with as the law directs.—(g.)

**VIII.** If any constable, or other officer, shall refuse, or neglect, upon due notice, or on his own view, to be aiding and assisting in the execution of this act, being thereunto required, he shall, upon conviction thereof, by the oath of one or more witnesses, before any justice of the peace for the district where such offence shall be committed, forfeit, for each offence, the sum of twelve dollars, to be levied by distress and sale, of the offender's goods, by warrant under the hand and seal of such justice of the peace; the one moiety to the use of the poor of the district, or parish, where such offence is committed, and the other moiety to the informer, who shall prosecute for the same, rendering the overplus, if any, to the owner.—(g.)

**IX.** This act shall not be construed to hinder any person from selling, or exposing to sale, any sort of goods or merchandise in any public market, or fair, in this state.—(h.)

**X.** Any person sued for any thing done in pursuance of this act, and obtaining judgment, shall be entitled to triple costs.—(h.)

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(g)—1738, P. L. p. 153. (p)—Ibid. (q)—1791, 1st Faust, p. 76.  
(q)—1738, P. L. p. 154.

## HUNTING.

I. If any person shall hunt with fire in the night time, he shall, for every such offence, forfeit and pay a sum not exceeding eight dollars and fifty-five cents, and for every deer so killed, a sum not exceeding twenty-one dollars and forty cents: And for every horse, or head of neat cattle, or stock of any other kind, a sum not exceeding forty-two dollars and eighty-five cents; which penalties may be recovered before any one justice of the peace and four disinterested freeholders of the district, where the offence shall be committed, and, when recovered, shall be paid, one half to the use of the district, and the other half to the informer, who will sue for the same: And in case any person so convicted shall refuse or neglect to pay such fine, the said justice, before whom he shall be convicted, shall commit such offender to the common gaol of the district, there to remain without bail or mainprize, for any term not exceeding three months.—(a.)

II. Any person who shall hunt in the night time with fire, or kill any horse, or neat cattle, or other stock, the property of another person, shall be liable to an action at law by the person so aggrieved, in addition to the above penalties.—(a.)

III. It shall be lawful for any justice of the peace, before whom such information shall be lodged of any breach of this law, to issue his warrant to any lawful constable, commanding him to summon a sufficient number of disinterested freeholders to appear at a certain time and place for the purpose of hearing, trying, and determining on, the said information; and the freeholders so summoned shall attend on pain of forfeiting, each, the sum of four dollars and twenty-five cents for neglect, to be sued for, levied and applied, as before mentioned, by authority of the same justice, unless such defaulter shall make a sufficient excuse on oath:—(a.)

IV. The said freeholders, previous to their entering upon any trial, shall take the following oath, or affirmation, to wit: "I, do swear, (or affirm) that I will, to the best of my judgment, without partiality, favor or affection, try the cause now pending between plaintiff and defendant, and a true verdict give according to evidence: So help me God."—(a.)

V. Any person convicted of killing does at any time between the first day of March, and the first day of September, shall be liable to the fines, forfeitures, and penalties herein before imposed, to be recovered and applied in the same manner.—(b.)

(a)—179. F. L. p. 497. (b)—Ibid, p. 498.

**VI.** If any person shall shoot or kill any buck running wild in the woods, between the first day of September, and the last day of October, or between the first day of March, and last day of April, in any year, such person shall forfeit and pay, for every such offence, the sum of one dollar and seventy cents, to be recovered before any justice of the peace in the district, where such offence shall be committed; to be applied, one half to the use of the poor of the district, and the other half to the informer: And in case any person so convicted shall refuse or neglect to pay such fine, it shall be lawful for the said justice to commit such offender to the district gaol, there to remain without bail or mainprize, for the space of three months.—(c.)

**VII.** If any servant, or slave, by command of his master, or mistress, or overseer, shall shoot or kill any deer, as aforesaid, the parties giving such commands shall be liable to the like penalties respectively: And if such servant, or slave, cannot prove such command, by a ticket in writing from his master, mistress or overseer, he shall receive, by order of such justice, for every such offence, twenty lashes on the bare back, unless security be given for payment of the fine within one month after such conviction: Provided always, that it shall be lawful for any freeholder, or house keeper, at any time, to kill, or cause to be killed, any kind of deer in his, or her, enclosed grounds; and that any person may kill, at any time, any deer for food, for the necessary subsistence of himself or his family, provided such person do not sell or dispose of the skin of the deer so killed: but in case any person, who shall be prosecuted for killing deer within the times prohibited, shall alledge, that he killed such deer for the necessary subsistence of himself or his family, the burthen of the proof shall lie on the party prosecuted.—(c.)

**VIII.** If any person shall hunt or range on any land whatsoever, without the consent of the proprietor, at a greater distance from his place of residence than seven miles, he shall forfeit and pay, for every such offence, the sum of one dollar and seventy cents, to be recovered and applied in the manner herein last above directed; except where such proprietor shall be the prosecutor, in which case the whole penalty shall go to the use of the poor of the district.—(c.)

**IX.** No person shall put fire to, or burn, any grass, brush, or other combustible matter, so that thereby the woods, fields, lands, or marshes be set on fire, nor cause the same to be done, nor be thereunto aiding or assisting: And whosoever shall offend herein, and be thereof convicted, shall forfeit the sum of twenty-one dollars and forty cents, one half to the informer, and the other to the use of the poor of the district, in which the

ofence shall be committed: And in default of payment, shall suffer imprisonment for a term not exceeding two months; and shall be moreover liable to the action of any person suffering damage thereby: Provided that no person shall be prevented from firing woods, fields, lands, or marshes, within his, or her, own bounds, so that he, or she, suffer not the fire to get without such bounds, and injure the woods, fence, or grass of his, or her, neighbor, or neighbors.—(d.)

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### INSOLVENT DEBTORS.

If any person sued, impleaded, or arrested, for any debt, duty, demand, cause, or thing whatsoever, (except as herein after excepted,) shall be disposed to surrender all his, or her, effects, towards satisfaction of the debts, wherewith he, or she, stands charged, or, in which he, or she, shall be indebted to any person, or persons, whomsoever, it shall be lawful for every such person to exhibit a petition to any of the courts of law, from which such process issued, certifying the causes of his, or her, imprisonment, together with an account of his, or her, real and personal estate, with the dates of the securities, wherein any part of it consists, and the deeds, notes, and vouchers relating thereto, and the names of the witnesses to the same, as far as his, or her, knowledge extends; and upon such petition, the court shall, by order or rule, cause the petitioner to be brought before them, and as well the creditors, at whose suit such person shall stand charged, as all other creditors to whom he, or she, shall be indebted, to be summoned by public notice in some gazette, (to be given three months at least,) personally, or by their attorney, to be and appear at the said court, before the justices thereof, at a day certain by them for that purpose to be appointed, at or after the expiration of the said three months; and upon the day of such appearance, if any of the creditors so summoned shall neglect or refuse to appear, upon affidavit made of the service of such rule or order, in manner aforesaid, the court shall, in a summary way, examine into the matter of the said petition, and hear what shall be alledged for, or against, the discharge of the said petitioner; and upon such examination, the court, or the justices thereof, may, and are hereby required to administer, or tender to the petitioner, the following oath, viz: “I, do solemnly swear in the presence of Almighty God, that I have been a prisoner in the common gaol of this state, from the time of my being arrested, at the suit of without my consent or procurement, and without any

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(d)—1789, P. L. p. 498.

fraud or collusion whatsoever; and that the account by me delivered into this honorable court, doth contain a true and full account of all my real and personal estate, debts, credits, and effects whatsoever, without exception, which I, or any person in trust for me, have, or at the time of my said petition had, or am, or was, in any respect entitled to, in possession, remainder, or reversion; and that I have not, any time since my being sued, arrested, or imprisoned, or before, directly, or indirectly, sold, leased, assigned, or otherwise disposed of, or made over in trust for myself, or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts, or other real or personal estate, whereby to expect or have any benefit or profit to myself, or to defraud any of my creditors, to whom I am indebted; and that I will, to the utmost of my power, endeavor to collect all and singular the title deeds to my lands, together with the remainder of my goods and effects contained in my said accounts, and the vouchers relating to, or concerning the same, wheresoever, or in whosesoever hands they may be, within this state, and will surrender the same to my assignee or assignees, as soon as possible after my discharge; and that I have not expended more than fifty-four cents (d) per day out of my estate, for my subsistence, since I have been a prisoner as aforesaid: So help me God." And in case the prisoner shall take the said oath, and upon such examination the said court shall be satisfied of the truth thereof, the said court shall have power, first, to give and deliver up to the said petitioner so much of the necessary bedding and wearing apparel of him, and his family, his working tools, and arms for muster, as they shall judge most suitable to his former station and condition in life: And, immediately thereupon, they shall order the lands, goods, and effects contained in the said account, or so much of them, as may be sufficient to satisfy the debts wherewith such prisoner shall be charged, and the fees of the keeper of the gaol, where such prisoner shall be in custody, together with the costs of suit, which shall be incurred on the suit or prosecution commenced against such petitioner, and all other costs and fees, which shall arise and become due upon prosecuting and obtaining his discharge, by a short endorsement on the back of his or her petition, signed by the petitioner, to be assigned to the creditor or creditors, at whose suit such petitioner stands charged, or to such other person, or persons, as the said court shall direct; and the assignment so made shall be in trust for the suitor, or suitors, and such other creditors of the said petitioner, as shall be willing to receive a dividend of his real estate, goods and effects, and shall within twelve months after the time of exhibiting the petition, make their demands:

(d) See prison bounds act, Sec. vi.

And by such assignment, the estate, interest and property of the lands, goods, and effects so assigned, shall be vested in the persons, to whom such assignment is made, who may take possession of, or sue for, the same, in his or their own name, or names, in like manner as assignees in commission of bankrupts may do by the statutes of Great Britain: To which suits no release of such petitioner, his, or her executors or administrators, or any trustee for him or her, subsequent to such assignment, shall be any bar: And the said petitioner, upon executing such assignment, and when he, or she, shall have delivered up, into the hands of the said assignee or assignees, all and singular his title deeds, vouchers and effects contained in his, or her, said accounts, so far as in his, or her, power so to do, shall be forthwith discharged, by order of the said court, from such suit or suits, and shall also thenceforth be acquitted and discharged of, from, and against all such other of his, or her, creditors, as shall have received their dividends, as aforesaid, for all debts, contracts, and demands whatsoever: Provided that such debtor shall also, within six months after his, or her, discharge, deliver up to the said assignee or assignees, all such goods and effects contained in the said schedule, as shall be afterwards in their power to deliver: And in case any such debtor shall refuse or neglect so to do, within the time aforesaid, it shall be lawful for the said justices, upon the application on oath, of the said assignee, or assignees, again to remand the said debtor to prison, there to remain, unless good cause be shewn by him, or her, to the contrary, until he, or she, do fully comply with the terms of this law: And provided that nothing herein contained shall extend to discharge such debtor from, or against the debts, claims, or demands of such of the petitioner's creditors, as shall not have received their dividend of the said petitioner's estate.—(a.)

II. No creditor, who shall either accept, or refuse, a dividend of any petitioner's estate, shall be at liberty to sue, implead, or arrest such petitioner for any debt or demand whatsoever, contracted, due, or owing to, or with such creditor, at or before the time of preferring the petition of such debtor, whereby to charge the person of such debtor in the custody of any sheriff or gaoler, in less than twelve months after his, or her, discharge by virtue of this act.—(b.)

III. Every person who shall be in the custody of any sheriff of this state, and shall once petition the judges thereof for his, or her, discharge, his, or her, executors or administrators, shall be incapacitated forever afterwards to plead the act of limitations in bar to any action, that may be afterwards brought against him, or her, by any person, who was his, or her, credi-

(a)—1759, P. L. p. 247.—See also p. 456, Sec. vi. (b)—Ibid, p. 240.

tor, for any demand or cause of action that existed at the time of exhibiting the petition for the discharge of the said prisoner, when in custody; and in case the act of limitation of this state shall afterwards be pleaded by such person, such plea shall be set aside by the court, where such action shall be brought, upon motion made by the plaintiff, or his attorney, upon producing the petition before exhibited by the defendant for the benefit of this act.—(m.)

**IV.** The justices of the court, from whence the process issued against any person, who shall petition for the benefit of this act, shall have power, at the request of the creditors, to recommit such person to the common gaol, there to remain confined for the term of twelve months, if the said court shall have reason to suspect that such person has not rendered a true and just account of his, or her, estate, real or personal, according to the true intent of this act: Provided, that the creditor requesting such re-committal, shall, during the said term, pay thirty-seven and a half cents (n) per day to the sheriff or gaoler for the subsistence of such person: and in case such creditor shall neglect to pay the same by the space of one week, then the sheriff or gaoler shall immediately discharge such person from his custody.—(n.)

**V.** In case of the inability, or refusal, of any person taken, arrested, or imprisoned, by mesne or final process, to pay for his maintenance in gaol, or prison bounds, such reasonable fees, as are, or may be, by law, allowed to the sheriff, then the assignee, or assignees of such debtor (to be appointed, in pursuance of either of the acts of the general assembly, passed on the seventh day of April, in the year of our Lord one thousand seven hundred and fifty nine, and the twenty ninth day of February, in the year of our Lord one thousand seven hundred and eighty eight,) shall be chargeable therewith, to be paid, in the first place, out of the effects in the hands of such assignee or assignees; and if the assignee, or assignees, of such debt, shall not have in their hands so much as may be sufficient to pay the fees aforesaid, then the person, at whose suit such debtor may have been taken or arrested, shall be liable therefor; and it shall and may be lawful for the person, to whom such fees are due and payable, to sue for, and recover the same, in a special action on the case. But in case any person taken, arrested, or imprisoned, by mesne, or final, process, shall neglect, or refuse to surrender his effects in favor of his creditors, and to avail himself of the acts aforesaid, for the relief of insolvent debtors, then the sheriff to whose custody such person may be committed, shall not be liable to provide for the diet and subsistence of such person, unless his

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(n)—1799, P. L p. 251. (o)—1805, Sess. Acts, p. 39. (n)—1799, P. L. p. 253.

reasonable fees for diet and subsistence be paid, or tendered to such sheriff at the expiration of every week.—(d.)

**VI.** When any person shall once petition for his, or her, discharge, the creditors of such person, by note, book account, or contract, not willing to accept a dividend of such petitioner's estate, shall be at liberty, in order to perpetuate the testimony of their respective demands, to prove the quantum of such demands, or balances due from or against such petitioner, at the court where such petitioner shall apply for his, or her, discharge ; and a minute or certificate thereof shall be entered with the clerk of the said court, of the sum or balance due to such creditor, or creditors, which minute or certificate shall thenceforth be good evidence of the sum so certified to be due from the said petitioner, and be deemed an account liquidated or stated, and recoverable as such without further evidence ; against which debt or demand, or any action for the same, the act of limitations of this state shall not be pleaded in bar.—(b.)

**VII.** If any insolvent debtor, at the time when he, or she, shall render an account of his, or her, estate, in pursuance of the directions of this act, shall conceal any debt that shall be owing to him, or her, it shall not be lawful for the person owing such debt, to pay the same, or any part thereof, to or for the use of such insolvent debtor ; but such person shall pay such debt, and every part thereof, to the assignee, or assignees, of such insolvent debtor : And such assignee, or assignees, may sue for the same in his, or their, own name, or names, in like manner as assignees in commissioners of bankrupts can, or lawfully may do by the laws or statutes in Great Britain ; in which suit, no release of such insolvent debtor, his, or her, executors, or administrators, or any trustee for him, or her, subsequent to the rendering of such account, shall be any bar.—(c.)

**VIII.** The person or persons, to whom the assignments are made, shall be trustees for all the creditors of such petitioner, who are willing to come and receive their dividends, and who shall, within twelve months after his, or her, discharge, deliver to the said trustees, or any of them, an exact account upon oath, of the several debts and demands to them owing : And the said trustee, or trustees, after having sold the said petitioner's lands and effects, and collected the debts due to him, or her, which they are hereby required to do with the utmost expedition, shall, thereout, first satisfy and discharge the costs and fees, as aforesaid ; and shall next deduct and retain in his, or their hands, a reasonable recompence for his, or their trouble, in executing the said trusts, to be fixed and allowed by the court, from which he, or they, received their appointment : And such trustee, or

(d)—1817, Sess. Acts, p. 34. (b)—1759, P. L. p. 251. (c)—1759, P. L. p. 253.

trustees, shall, within one month thereafter, divide the balance of the said estate amongst such of the creditors, as deliver in the amount of their demands within the time aforesaid, according and in proportion, to their several debts ; first giving three months' public notice of the time and place, when, and where, such division is to be made : And in case it shall happen that the whole of the petitioner's estate shall not have come to the hands of the said trustee, or trustees, by the time prescribed for the making of such division, then such trustee, or trustees, shall be obliged, at the end of every six months thereafter, to make a dividend of so much of the same, as shall come to his, or their hands, amongst such creditors as aforesaid, until the whole be received.—(d.)

**IX.** Every insolvent debtor who shall make an assignment of his, or her, estate, in trust for the use and benefit of creditors, pursuant to this act, shall be obliged to assist the trustee, or trustees, at all times when thereunto required, in the recovery of the debts assigned, and in every matter, which may be thought necessary for the benefit of the said creditors ; and in consideration thereof, such trustee shall have power, in all cases, where they shall be of opinion that such insolvent debtor hath acted honestly and justly, to make him, or her, such allowance for the subsistence of such insolvent debtor, and of his, or her family, as the said trustees shall think meet : Provided that such allowance do not exceed five per cent. of the whole money received upon such insolvent debtor's account.—(g.)

**X.** Every person, who shall, within twelve months after the discharge of any such prisoner, voluntarily make a discovery of any part of such debtor's real or personal estate subsisting at the time of his, or her, swearing off, that shall not be comprised in such schedule as aforesaid, before the court, shall be allowed at the rate of fifty per cent. out of the nett produce of the estate so discovered by him, or her ; which shall be ordered, on such discovery, to be paid by the trustee, or assignee, out of such debtor's estate.—(g.)

**XI.** Every person, to whom any part of the estate, real or personal, of such petitioner, shall be assigned, mortgaged, or conveyed in trust, or the attorneys, agents, executors, or administrators of such person, shall, at the time and place appointed by the court for the appearance of the creditors of the said petitioner, deliver in to the said court, a fair account, or accounts, on oath then to be administered by the said court, of all the monies that are really and bona fide due and owing unto them, or either of them, in right of themselves, or of their respective testators, intestate, or constituents, from such petitioner, upon such mortgage, assignment, or conveyance : And if the estate

(d)—1759, P. L. p. 249. (g)—1759, P. L. p. 253.

so conveyed shall, to the said court appear to be more than sufficient to satisfy the said sum, or sums of money so due upon the said account, or accounts, they shall order the said trustees, or either of them, to sell and dispose of such estate, at public outcry, to the best advantage, in not less than one month thereafter, and not exceeding twelve months: And the money arising from such sale the said trustees shall apply, first, towards the discharge of the said sum or sums so due unto such assignee, mortgagee, or other person, to whom such conveyance was made, as aforesaid, and the residue thereof shall pay and apply in like manner as other parts of the said petitioner's estate: Provided that any trustee, or mortgagee, who shall be, at the time of the notice aforesaid being given, out of the limits of this state, and have no attorneys, factors, managers, or agents, who can be summoned within the time mentioned in the notice hereby required to be given, shall have such further time and indulgence to deliver into the said court, a fair account, or accounts, of all the monies that are really and bona fide due and owing unto them in manner aforesaid, as the said court shall, upon application for that purpose, under the circumstances of the case, think needful and expedient: And that such absent trustees, or mortgagees, their attorneys, factors, managers, or agents, who cannot be summoned within the time aforesaid, shall transmit to the clerk of the said court, at, or before, the time to be appointed for that purpose, a fair and attested account or accounts of the monies due upon such conveyance, or conveyances, as before directed: And such affidavit and return shall be as sufficient and effectual, as if they, or any of them, had appeared with such account or accounts before the said court in his, her, or their proper persons: And provided also, that such affidavit, so to be transmitted, be taken in writing on the solemn oath, or affirmation, of the affiant, before the mayor, or other chief magistrate of any city, borough, or town corporate, where, or near to which, the person making such oath or affirmation shall reside, and certified and transmitted under the common seal of such city, borough, or town corporate, or seal of office of such mayor, or other chief magistrate: And provided further, that in every such affidavit there shall be expressed the addition of the party making such affidavit and the particular place of his, or her abode; and if any person making such affidavit upon solemn oath or affirmation as aforesaid, shall be guilty of falsely and wilfully swearing or affirming any matter or thing in such affidavit, which, if the same had been sworn or affirmed upon an examination in the usual form, would have amounted to wilful and corrupt perjury, every such person being thereof lawfully convicted, shall incur the penalties and forfeitures provided against persons convicted of wilful and corrupt perjury.—(h.)

XII. If any person to whom such conveyance is made, his or her attorney, agent, executors or administrators, or any of them, shall, by sickness, or other lawful impediment, be unable to appear at the time and place herein before directed to be appointed, and such person shall make affidavit of such his, or her, inability to appear and attend, as aforesaid, and with such affidavit, transmit to the clerk of the said court, at, or before, the appointed time, such fair and attested account or accounts, as are herein before directed, of the monies due upon such conveyance, or conveyances, such affidavit and return shall be as sufficient and effectual, to all intents and purposes, as if they, or any of them, had appeared with such account, or accounts, before the said court, in his, her, or their proper persons; Provided, that such affidavit be taken before, and certified by, two justices appointed to keep the peace in this state.—(m.)

XIII. In case any debtor, at any time before his or her being taken into custody, shall have made any conveyance, bill of sale, or assignment of any lands, tenements, goods, or chattels, whatsoever, to any person, or persons, whomsoever, and such person, or persons, his, her, or their attorney, agent, executors, or administrators, shall not appear before the said court at the time appointed for the appearance of the creditors of such insolvent debtor, (or in case of their, or either of their, sickness, or other lawful impediment, shall not transmit such affidavit, and attested account, as before directed,) and then and there make oath, that such mortgage, bill of sale, assignment, or other conveyance, was made, to the best of their knowledge and belief, for a valuable consideration actually paid, or in case of a judgment, that such judgment was for a debt bona fide due, then every such person, or persons, his, her, or their attorneys, agents, executors, or administrators, shall be deemed to have taken and accepted from the said petitioner, a false and feigned trust, with intention to defraud the creditors of the said petitioner, and to conceal his, or her, estate and effects from them: And every such mortgage, bill of sale, judgment, assignment, or other conveyance, shall be null and void to all intents and purposes; and the land, tenements, goods and chattels, thereby conveyed, and money paid upon such judgment, shall be vested in the said trustees, in like manner, and for the like purposes, as all the other estate and effects of the said petitioner.—(m.)

XIV. No person shall be entitled to the benefit of this act, who shall be sued, impleaded, or arrested for damages recovered in any action for wilful mayhem, or wilful and malicious trespass, or for damages recovered in any action for voluntary and permissive waste, or for damages done to the freehold: And nothing in this act shall be construed to extend or give, or

grant, any privilege, benefit, or advantage, to any person, who hath, or shall, for, or upon marriage of any of his, or her children, have given, advanced, or paid above the value of eighty-five dollars and seventy-two cents, unless he, or she, shall prove by his, or her, books, fairly kept, or otherwise upon his, or her, oath, or solemn affirmation, before the court, that he, or she, had, at the time thereof, over and above the value so given, advanced or paid, remaining in goods, wares, debts, ready money, or other estate, real or personal, sufficient to pay and satisfy unto each and every person, to whom, he or she was indebted, their full and entire debts; or who hath, or shall have lost, in any one day, the sum or value of four dollars twenty-eight cents and six mills, or in the whole, the sum and value of seventeen dollars fourteen cents and four mills, within the space of twelve months next preceding his, or her, petition to the court, in playing at, or with, cards, dice, tables, tennis, bowls, billiards, shuffle-board; or in or by cock-fighting, horse-races, dog-matches, or foot-races, or other pastimes, game, or games, whatsoever, or in, or by, bearing a share or part, in the stakes, wagers, or adventures, or in, or by, betters on the sides, or hands, of such as do, or shall play, act, ride, or run, as aforesaid.—(a.)

XV. The senior and associate justices of the courts of law shall proceed in all cases directed by this act, at the several courts of sessions and common pleas, and the adjournments and return days of the said courts, or any of them, and at no other time whatsoever.—(a.)

XVI. In case it shall at any time after the discharge of such petitioner, appear that he, or she, did conceal any part of his, or her, estate, and not make a full surrender and delivery thereof, such debtor shall not be entitled to the benefit of this act, and shall be deemed and adjudged guilty of perjury, and be punished in the law, in that case, directs.—(p.)

XVII. If any person confined on mesne process in any civil action, or on execution, provided the person on execution has not been in actual confinement above forty days, be determined to deliver up all his, or her, estate, and effects, and to take the benefit of the act for the more effectual relief of insolvent debtors, passed the 7th day of April, 1759, he, or she, shall have the benefit of the said act, altho' he, or she, may have given bail to the action, or not surrendered him, or herself, within ten days after the arrest, or not presented a petition within forty days after confinement, or not been actually confined three months, provided he, or she, comply with the other requisites of the said act, and the justices of the court, from which the process issued against such person, shall be satisfied that he, or she, hath rendered a just and fair account of his, or her, estate: And,

(a)—1759, P. L. p. 251. (p)—Ibid, p. 252.

cases, where such application shall be made by persons in confinement, on process issued from the court of common pleas, to the sheriff, of the circuit court districts, such persons may make such surrender of their estates and effects, to the three nearest justices of the peace; who shall receive and transmit such schedule to the clerk of the court of common pleas without delay.—(b.)

XVIII. Any prisoner confined on mesne process, shall have liberty to render, at any time during his, or her, confinement, on such process, a schedule on oath, or affirmation, of his, or her, whole estate, or of so much thereof, as will pay and satisfy the sum really due on the action, on which he, or she, may be confined; and the clerk of the court, in the district, where he, or she, shall be confined, within ten days after the receipt of the schedule from the prisoner confined, as aforesaid, on execution, or mesne process, as the case may be, shall give public notice, that the prisoner will be liberated, and the property assigned, unless satisfactory cause is shewn to the contrary, before one or more of the judges of the court, where the process originates, or one or more of the commissioners appointed for taking special bail, in the circuit districts: And if no satisfactory cause shall be then shewn to the contrary, the judge, or justice, or commissioner of special bail, before whom the prisoner shall be brought, shall order an assessment of the prisoner's estate and effects, mentioned in the schedule, to be made to the plaintiff, subject nevertheless, to all prior incumbrances; whereupon the creditor may take possession, and if necessary, sue in his, or her, own name, for the recovery thereof; and the prisoner shall be discharged from confinement; but, if the plaintiff shall shew cause for disbelieving the prisoner's oath, or affirmation, or shall desire further time for information, the judge, justice, or commissioner of special bail, shall have power to remand the prisoner, and appoint another day for his, or her, appearance; and if in the second day the plaintiff shall not appear, or shall be unable to prove that the prisoner's oath, or affirmation, ought not to be believed, the judge, justice, or commissioner of special bail, after assignment made in manner aforesaid, shall discharge the prisoner.—(b.)

XIX. The property mentioned in such schedule, must be visible property, if the prisoner is possessed of any such, but if he, or she, is not, chooses in action must be mentioned, with the names, and places of abode, of the witnesses thereto; and if the property mentioned in the schedule should prove defective, any other property that the prisoner may have, or thereafter acquire, shall be liable for the demand, for which he, or she, is confined.—(b.)

XX. No prisoner shall be discharged without fully satisfying the action, or execution, on which he, or she, is confined, if; since his, or her confinement, and before he, or she, gave security for the prison bounds, he, or she, has been seen without the prison walls; or if since his, or her, giving security, he, or she, has been seen without the prison walls, without being legally authorized so to do, or shall have spent more than fifty cents a day; or if he, or she, is confined on account of wilful mayhem, or wilful and malicious trespass, or for voluntary or permissive waste, or damages done to the freehold, or who shall have, within three months before his, or her, confinement, or at any time since, paid or assigned his estate, or any part thereof, to one creditor in preference to another, or fraudulently sold, conveyed, or assigned his estate to defraud his creditors; but whenever a prisoner shall be accused by the plaintiff, or his agent, of fraud, or of having given an undue preference to one creditor, to the prejudice of the plaintiff; or of having made a false return, or of having gone without the prison walls, or prison rules, as the case may be, it shall be lawful for the judge, or justice, before whom the prisoner is brought, to direct a jury to be empanelled, and now to determine the fact.—(c.)

(c)—1788, P. L. p. 457.—As a great diversity of opinion is understood to exist, and there has been no constitutional decision, in relation to the true construction of the acts for the relief of insolvent debtors, the author of this digest trusts it will not be deemed presumptuous in him, to present his own view of the subject. The difficulties seem to be in the different modes of proceeding, and the different extents of relief under the two acts, while they have been generally considered as forming one uniform system of relief. These difficulties he has endeavoured to obviate, as much as possible, by the arrangement of the several sections, but as his object could not be fully accomplished in this way, a few explanatory observations will be necessary. By the act of 1759, a debtor was entitled to the benefit of the act, unless he had remained in actual confinement, in the common gaol, at least three months. This, tho' not expressly enacted, followed as a necessary consequence of that provision of the act, which required three months' notice to be given in some gazette, to enable his creditors to be prepared to contest his right to a discharge, and a day to be appointed at, or after, the expiration of that time, for examining into the matter of his petition, which was to be presented in one month after his arrest, (see the act, sec. i. and xii.) and in certain cases, prisoners were excluded altogether from the benefit of the act, (see sec. vii.) The extent of relief afforded, upon his complying with all the requisites of the act, was a full discharge from his suing creditors, and such others as should be willing to accept a dividend of his estate, and should make their demands within twelve months; a certain allowance for the support of himself and family, and an exemption from suits for all pre-existing causes of action, for one year. And this appears still to be the law, with respect to persons in execution, who shall have remained in confinement more than forty days, without presenting a petition. The surrender of the prisoner's estate, and the assignment to trustees, was also to be made in open court. But, by the 6th section of the act of 1788, the law is so altered, that a prisoner on mesne process, or in execution, (provided the prisoner in execution shall not have been in confinement more than forty days) altho' he may have given bail to the actions, &c. is entitled to the benefit of the act of 1759, without remaining in confinement three months, upon complying with the other requisites of that act; and may make a surrender of his estate to the three nearest justices of the peace, who are directed to transmit his

## 160 INSPECTION OF COUNTRY PRODUCE.

XXI. Every creditor in this state, who shall take, in execution, the body of any debtor, by writ of capias ad satisfacendum, shall be authorized, with the consent of such debtor, to discharge him from his arrest, and suffer him to go at large, without disparaging, or weakening, the force of his judgment; and the liberation of the body of such debtor, in consequence of such indulgence, shall not be construed to destroy, or, in any manner, affect the lien of his judgment, on the estate of such debtor; but the same shall remain in as full force, after the granting of such indulgence, and liberation of the body of the defendant thereon, as if no such indulgence had been granted: Provided nevertheless, that the granting of such indulgence, shall, in no wise, incapacitate, or prevent, the plaintiff from afterwards taking out such other writs of capias ad satisfacendum, against the body of the defendant, or of fieri facias, against his property, on the said judgment, as he shall direct.—(d.)

## INSPECTION OF COUNTRY PRODUCE.

ALL tobacco, previous to its being exported, or exposed to sale, shall be brought for inspection to some ware-house erected

schedule to the clerk of the court from which the process issued; and, in all other respects, the mode of proceeding, and extent of relief, seem to be the same in both cases. The latter act does not dispense with the petition, the three months' public notice in some gazette, nor the appointment of a day at, or after, the three months, for examining into the matter: when the same proceedings will be had, except as to surrender and assignment, as if the prisoner had remained in confinement during the whole time. The causes, that would bar a prisoner from the benefit of the act, are the same in both cases. (see sec. viii.) By the other sections of the act of 1788, which relate to the relief of insolvent debtors, a prisoner, either on mesne process, or in execution, may, at any time, during his confinement, render, on oath or affirmation, a schedule of his estate, or of so much thereof as will satisfy the debt, for which he is confined, to the clerk of the court, whence the process issued; and the clerk shall, within ten days after the receipt of such schedule, give public notice that the prisoner will be liberated, and the property assigned, unless satisfactory cause is shewn to the contrary; and if no cause be shewn, an assignment will be ordered, and the prisoner discharged from confinement; but, if the plaintiff shews cause for not believing the prisoner's oath, he may be remanded, and another day appointed for further examination. In this case, the proceedings may be had before a judge of the court, from which the process issues, or a commissioner of special suit: and the only benefit is a discharge from confinement for that particular debt; and any property that the prisoner may thereafter acquire, will be liable for it. In certain cases, (see prison bounds act, sec. vii.) the prisoner will not even be discharged from confinement, without fully satisfying the debt; and in some cases, too, a jury is ordered to be impanelled. But it is to be clause appears to be nugatory; the law having made no provision for impaneling juries on such occasions.

(d)—1815, Sess. Acts, p. 22.

## INSPECTION OF COUNTRY PRODUCE. 181

ed for that purpose; and, if passed, shall be there deposited, 'till called for, for exportation.—(a.)

II. When any hogshead, or parcel of tobacco, shall be brought to a ware-house for inspection, the inspectors shall cause the hogshead to be stripped off, and carefully examine the tobacco in as many places as they shall think necessary, not exceeding three; and, if found to be sound, clean and merchantable, he or they shall cause the hogshead to be put on and coopered in a secure and merchantable manner, weighed and marked, and securely stored in the said warehouse, there to remain 'till demanded for exportation. —(b.)

III. Upon view of any hogshead, or parcel, of tobacco, brought to any public tobacco inspection, or ware-house, the inspector, or inspectors, shall cause the same to be classed according to the quality thereof, that is to say, the first, second, and third quality; and shall weigh, receive, and give a note for, the same, according to the quality of the tobacco, and class, to which it belongs; and shall not cause any tobacco to be burnt or destroyed.—(c.)

IV. The commissioners, respectively, or, in the country, the proprietors, (and in case of their refusal or neglect, the commissioners,) shall provide, at each ware-house, a good and secure close house, or houses, (the expense of which shall be deducted out of the storage of the tobacco,) for packing away all loose and small parcels of tobacco, that may be brought for inspection; and the several inspectors shall receive all such loose or small parcels of tobacco; and if found good, sound, and clean, he, or they, shall weigh the same, and have it put up in the place above described; for which the said inspector, or inspectors, shall give a note specifying the name of the ware-house, the quantity, [and quality (o) ] of the tobacco, and that the bearer is entitled thereto: which said small parcels, or light hogsheads, of tobacco, the inspectors shall cause to be prized into hogsheads to contain not less than nine hundred and fifty pounds nett: and on any person's producing small notes to the amount of nine hundred and fifty pounds, he, or she, paying the lawful fees, shall be entitled to receive a note or certificate for a crop hogshead, allowing for shrinkage on all transfer notes brought in to be exchanged for crop hogsheads, to be deducted by the inspectors, to wit: From all such, as are exchanged within one month after date, two per cent.; from such as are brought in within two months after date, and above one month, four per cent.; and so on, 'till it shall amount to eight per cent. but no more.—(d.)

V. The commissioners shall provide and keep in good repair at their respective ware-houses, sufficient scales and weights,

(a)—1789. P. L. p. 479. (b)—Ibid, p. 480 (c)—1810, Sess. Act, p. 28.  
(d)—1810, Session Accts, p. 28. (d)—1789, P. L. p. 480—b.

## 192 INSPECTION OF COUNTRY PRODUCE.

prizes, or screws, and other implements, necessary for the inspection of tobacco, and a sufficient number of hands for coo-pering, packing, storing, and delivering all the tobacco that may be brought to the said ware-houses: and on failure so to do, they, or the persons contracted with to do the same, shall forfeit and pay the sum of two hundred and fourteen dollars and thirty cents, for every such neglect, one half for the use of the state, and the other half for the person suing for the same, to be recovered in any court of law, having competent jurisdiction: And the said commissioners shall have power to take and receive the sum of one dollar and fifty cents, for each and every hogshead of tobacco, when delivered out of their respective ware-houses for exportation, to be paid by the exporter; which money shall be applied by the commissioners towards paying the inspector's salaries and coperage in the first place, and the surplus for the purpose of erecting proper ware-houses, and all necessary buildings and utensils upon such lot or piece of ground, as shall be purchased for the permanent inspection of tobacco in, or near, Charleston, until the buildings so to be erected shall be completed.—(d.)

VI. Every owner, or the commissioners, of ware-houses in the country, shall provide and keep, in good repair, at their respective ware-houses, good and sufficient scales and weights, at their own expense, prizes, and other implements necessary for the inspection of tobacco, the expense of which shall be defrayed out of the storage of tobacco, (a) and on failure thereof, shall be subject to a forfeiture of two dollars and ten cents per day, to be recovered by any person aggrieved, before any justice of the peace of this state: And the inspector, or inspectors, shall enter in a book, to be kept for that purpose, the number of each hogshead, the gross, tare, and nett, weight, the maker's, or owner's name; and to whom the same was delivered for exportation, and when. And where ware-houses have been built by commissioners; the inspector, or inspectors, shall account with such commissioners, and pay into their hands the storage money quarterly: And where necessary buildings have been provided by the proprietor, they shall account with such proprietor in like manner; and either may demand and have a sight of the inspector's books, if it shall be judged necessary.—(b.)

VII. When the proprietors of the lands where inspections of tobacco shall be authorized by law, shall refuse or neglect to erect such buildings, as the commissioners respectively appointed, or a majority of them, shall think necessary, the said commissioners respectively, shall cause the said ware-houses to be built, of such size and dimensions, as they may judge proper,

(d)—1789, P. L. p. 480—1. (a) P. L. p. 481, Sec. xi. (b)—1789, Ibid, p. 482.

## INSPECTION OF COUNTRY PRODUCE. 169

and to defray the expense thereof, shall take, and receive, from the inspector, or inspectors, all such storage of tobacco as may arise thereon; and the said inspector, or inspectors, shall pay the same into the hands of such commissioners quarterly; that is to say, on the first days of April, July, October and January, on oath, until the expense of the said buildings is fully paid; and from thenceforward, the proprietor shall be entitled to the said storage, he keeping the said ware-house, or ware-houses, in proper repair, and a number of good and sufficient prizes for heading up tobacco after it has been stripped for examination: But where any proprietor shall neglect, or refuse, to keep in repair, prizes, or proper screws for the above purpose, it shall be lawful for the inspector, or inspectors, to have a sufficient number of prizes erected, two of which, at least, at each ware-house, shall be for the particular use of such planters, as choose to cooper their own hogsheads; to defray the expense of which, it shall be lawful for the inspector so providing, to stop the first money that may come to hand.—(g.)

VIII. If any commissioner, inspector, cooper, or picker, shall take any other fee, gift, or gratuity, from planter or merchant, than is allowed by law, he shall pay to the party aggrieved, ten cents for every cent so taken.—(g.)

IX. Every tobacco hogshead shall be made of good well seasoned timber, the staves not exceeding four feet two inches in length, and the outside of the head thirty-three inches diameter, and shall be branded with the initials of the name of the maker, or owner, of the tobacco; and when brought to any of the inspectors in the country, such inspector, or inspectors, shall cause the cask to be stripped off, weighed, and marked, the tobacco carefully broke and examined, and samples drawn out in as many places, as the inspector, or inspectors, shall think necessary, not exceeding two; and if the tobacco be found good, sound, and merchantable, he, or they, shall cause the hogshead to be put on, coopered and headed up in a secure and merchantable manner, at the owner's expense, for which the inspector, or cooper, finding nails, shall charge the sum of thirty-two cents: Provided that where any person shall choose to cooper his own hogshead, he shall be at liberty to do so, and shall be allowed the immediate use of a prize, or screw, for that purpose, without fee or reward: And every hogshead so examined and weighed, and containing not less than nine hundred and fifty pounds of nett tobacco, shall be deemed a merchantable hogshead; and a tender in all tobacco payments.—(h.)

X. When any tobacco shall be so much cut away as to reduce the same under nine hundred and fifty pounds nett, the deficiency shall be supplied by taking the cut tobacco to pie-

(g)—1789, P. L. p. 480. (h)—Ibid, p. 431.

## 184 INSPECTION OF COUNTRY PRODUCE.

ces and repacking the same, with such additional tobacco as shall be requisite, by screws or presses.—(m.)

XI. When tobacco shall be delivered at any ware-house, to any boat, flat, or other craft, to be carried to, and laden on board, any ship or vessel bound to a foreign market, or waggon, or boats, to be removed to a sea port, the inspector, or inspectors, shall take up his, or their notes, and give a manifest of the tobacco so delivered, in which shall be expressed the name of the ware house; and which shall run in the following words: "Delivered the      day of      to      patron of the boat,      hogsheads of tobacco, marks, weights, numbers, &c. as per margin, to go on board the (ship or other vessel,) for exportation." When removed by waggon or boat, a blank shall be left for the shipper to insert the name of the vessel; the shipper's mark and number shall also be inserted in the face of the manifest, by the inspector, when known; but when it is otherwise, a blank column shall be left for that purpose, to be filled up by the shipper.—(m.)

XII. The storage in the country inspections shall be twenty-one cents per hogshead: Provided that, after the expiration of four months, the said storage shall be at the rate of five and three quarter cents for each month, unless otherwise directed.—(n.)

XIII. The commissioners for the several tobacco inspections shall have power to nominate and appoint an inspector, or inspectors, for the several ware-houses respectively —(n.)

XIV. Each inspector so appointed, shall give bond with substantial security, to be approved by the respective commissioners, in the sum of four thousand two hundred and eighty-six dollars, conditioned well and faithfully to discharge the duties of his office, and made payable to the treasurers of this state; which bond shall be taken by the respective commissioners, and lodged in the office of the clerk of the district, (or, in Charleston, in the treasury): Any if any inspector shall neglect to give reasonable attendance, or shall be guilty of any malpractice, the inspector so offending, may be removed at the pleasure of the commissioners, who appointed him; and such commissioners shall have power to appoint another in his room: Provided that no such removal shall be lawful, unless such inspector hath liberty to make his defence, and an opportunity given him to disprove the charge alledged against him.—(n.)

XV. Each inspector, previous to entering on his office, shall take the following oath or affirmation before the commissioners, by whom he is appointed, who shall be authorized to administer the same, to-wit: "I do sincerely promise and swear,

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(m)—1789. P. L. p. 482 Subsequent proceedings, regulated by congress, see constitution of the United States, article 1, section 38. (n)—Ibid, p. 483.

## INSPECTION OF COUNTRY PRODUCE. 185

(or affirm,) that I will well and faithfully inspect all tobacco, that shall be brought to me for that purpose, without partiality, favor, or affection, according to the best of my judgment; and that I will not, by myself, or any other person, employed by, or for me, be concerned, either directly, or indirectly, in the purchase, or sale, of any tobacco whatsoever, during my holding the office of inspector, my own crop, or such as is directed by law to be sold, only excepted: So help me God."—(b.)

XVI. The commissioners, respectively, shall fix the hours, in which the inspectors shall attend at the respective stores, and each inspector shall forfeit and pay the sum of two dollars and ten cents for every hour he shall wilfully delay or absent himself from the duties of his office, to be sued for and recovered by a summary process before any judge, or justice of the peace, in this state, for the use of the person aggrieved.—(b.)

XVII. The inspectors in the country shall be paid a salary, to be fixed by the commissioners, in lieu of all fees and charges; and a tax of sixty-five cents per hogshead shall be paid on every hogshead of tobacco inspected at any such inspection ware-house, to be paid by the purchaser, and applied to that purpose.—(c.)

XVIII. The commissioners of the tobacco inspection in Charleston, shall be authorized to collect a sum not exceeding ten cents per week, as storage for every hogshead of tobacco, that may remain in store for a longer time than twelve months, in the ware-house of the said inspection.—(d.)

XIX. When tobacco shall be delivered by any of the inspectors for inspection, and the person, to whom the same is delivered, or in whose care it may be, shall change the cask, in which it was delivered, and put other tobacco therein, or suffer any part to be taken out, and other tobacco put in, not the contents of the cask when delivered, the person so offending shall, upon conviction, pay a fine of sixty-four dollars and twenty-eight cents, and suffer three months' imprisonment.—(g.)

XX. The commissioners, respectively, shall transmit an account of the number of hogsheads of tobacco, and the net weight thereof, inspected at each ware-house, and the expenses attending the same each year, to the commissioners of the treasury, for the inspection of the legislature.—(g.)

XXI. The commissioners for building ware-houses and appointing inspectors of tobacco, shall have power to settle with, and receive from, the inspectors, at the respective ware-houses, all surplus monies that may be in their hands at the expiration of every year; and on the inspectors' refusing or neglecting to

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(b)—1789, P. L. p. 484. (c)—Ibid, p. 482. (d)—1803, 2d Faust, p. 506.

(g)—1789, P. L. p. 484.

## 186 INSPECTION OF COUNTRY PRODUCE.

pay such balance, or surplus, the said commissioners shall have authority to compel the payment of the same.—(h.)

XXII. The inspectors, at the several ware-houses, respectively, shall receive each hogshead of tobacco so examined, passed, weighed, and coopered as aforesaid, into their ware-houses, and shall number and brand the same, S. C. and mark on the head and staves thereof, the gross, tare, and nett weight of tobacco contained therein; and shall deliver to the owner, a note, wherein shall be expressed the planter's brand, the number, river, and ware-house, the gross, tare, and nett weight, quality and class; and upon presenting such note, the tobacco to be delivered to the holder thereof for exportation.—(m.)

XXIII. Where any transfer tobacco that shall have been inspected before the first day of the past August, shall lie in any ware-house till the next circuit court in November, of the district, in which such ware-house is situated, and no note produced for the same, then, at such circuit court, the inspector, or inspectors, shall cause the same to be sold at public sale, for cash; and the holders of notes for transfer tobacco, in any of the said ware-houses, after such sale, shall receive cash for the same, on producing the note to the inspector, or inspectors, at the rate the same was sold for, with the deduction of ten per cent. for loss of weight and trouble of selling, receiving, and paying.—(n.)

XXIV. At each of the inspections there shall be one, or more, pickers, who shall be approved of by the commissioners, respectively, and shall attend upon oath, and be sworn by the said commissioners. For picking, they shall be allowed one eighth part, out of the first six hundred weight, and five per cent. for all above that quantity, that may be saved out of any hogshead of tobacco by him, or them picked.—(o.)

XXV. Every person, who shall sell, or expose for sale, in any port, or place, of exportation, or in any other part of this state, any pitch, tar, turpentine, beef, or pork, in any casks, or barrels, unless a burnt mark, with the first letter of the christian name, and the surname at length, of the maker of such commodity, made with an iron brand, shall first be set on every such cask, or barrel, shall, for every such cask, or barrel, forfeit the sum of thirty cents to the person, or persons, who will inform and sue for the same, to be recovered before any justice of the peace in the manner directed for the trial of small and mean causes. And if any merchant, factor, trader, or other person, shall put on board any ship, or vessel, any of the said commodities, in any casks, or barrels, with intent to export the same, before such casks, or barrels, shall be marked, or brand-

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(h)—1791, 1<sup>st</sup> Faust, p. 187. (m)—1789, P. L. p. 482, and 1810, Seq., A.c.s. p. 28. (n)—1789, P. L. p. 481. (o)—Ibid, p. 483.

ed, as aforesaid, every such merchant, factor, trader, or other person, shall forfeit the sum of thirty cents for every such cask, or barrel, to be sued, recovered, and disposed of in manner aforesaid.—(a.)

**XXVI.** Every barrel of pitch which shall be made and sold in this state, shall contain three hundred and twenty-two pounds, gross weight; every barrel of tar shall contain thirty-two gallons; every barrel of pork or beef shall contain thirty gallons, and two hundred pounds of wholesome, well cured meat in the same, which shall be weighed by the packer, and well packed with salt and pickle, each piece not to weigh more than eight pounds, and not to be cut and mangled further than to take out the kernels, or where the bones require it, and not more than two heads in one barrel of pork, but no beeves' heads, or shanks, shall at all be packed: And every barrel of rosin and turpentine, shall be clean strained and merchantable, without chips, leaves, filth, or dirt.—(b.)

**XXVII.** Every person, who shall kill any cattle to put in barrels for sale, without having previously penned them for twelve hours, shall forfeit the sum of one dollar and eighty cents for every head of cattle so killed, to any person who will inform and sue for the same, to be recovered by any justice of peace.—(b.)

**XXVIII.** Every person shall make his casks for packing beef or pork, of sound, dry, and well seasoned, white, or water oak, timber, without sap; the heads, as well as bodies, of which casks shall be made tight, so as to hold pickle; and shall fill the said casks with water before the same is packed with any beef or pork.—(b.)

**XXIX.** No merchant, factor, trader, or other person, shall put on board any ship or vessel, for exportation, any tar, or turpentine, before the same is marked by some public packer, who shall be appointed for that purpose: And if any person shall offend herein, he shall forfeit the sum of sixty cents for each cask, or barrel, so shipped for exportation from this state, to be recovered before any justice of the peace, and be paid to the informer.—(b.)

**XXX.** No merchant, factor, trader, or other person, shall ship for exportation for a foreign market, any beef, or pork, unless the same be packed by the public packer of that port or place, whence the same is intended to be shipped, and by the said packer marked and branded, on pain of forfeiting the sum of sixty cents for every such cask, or barrel.—(c.)

**XXXI.** In case any public packer shall suspect any barrel of tar, or turpentine, before he marks the same, to be fraudulent

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(a)—1746, P. L. p. 208. See last section. (b)—Ibid, p. 209. (c)—Ibid, p. 210.

188 - INSPECTION OF COUNTRY PRODUCE.

and deceitful, he shall acquaint the person treating for the purchase of the same, with such his suspicions, and shall open and examine such suspected cask, or casks, or barrels: (o) And if the same shall appear to be fraudulently and deceitfully packed, and exposed to sale, the same shall be forfeited and sold by the treasurer to such persons, as will expend and use the same within this state, and the money applied to the use of the state.—(l.)

XXXII. If any fraud, or abuse, shall be suspected in any barrel of pitch, or rosin, which shall be brought to market, or exposed to sale, the person who shall treat for the purchase of such pitch, or rosin, shall be at liberty to cut open as many barrels of the same, as he shall think proper; which shall be liable to be viewed, judged, and forfeited, as hereinafter directed in the case of rice; and when any pitch, or rosin, shall be condemned as fraudulent by the persons empowered to view and judge the same, all such condemned pitch and rosin shall be forfeited and sold by the treasurer, and applied as directed in the case of rice: Provided, that where any pitch, or rosin, shall be cut open, as aforesaid, without the consent of the owner, or person exposing the same for sale, the same shall be done at the risk of the person who shall cause such pitch so to be cut open, i. e. if such pitch, or rosin, shall not be condemned as fraudulent by the persons empowered to view and judge the same, then the person who caused the said pitch, or rosin, to be so cut open and examined, shall take to himself every barrel so cut open and not condemned, and shall pay to the owner, or person, offering the same for sale, the current sum or price which good pitch, or rosin, shall then bear at that port or place.—(g.)

XXXIII. Every public packer shall receive, for his trouble, from the owner or seller of any tar, the sum of three cents for each barrel, and no more, for packing and marking the same with a hot iron; and for every barrel of turpentine, which he shall mark and brand, one and a half cent, and the sum of six cents for every barrel of beef, or pork, which he shall pack, or mark, as aforesaid: And before he enters upon the execution of his office, every packer shall take the following oath, to wit: "I do solemnly and sincerely swear, that I will faithfully and impartially execute the business and duty of a packer, in the town (or port) of      without favor, or prejudice, to any person, or party whatsoever, according to the best of my skill and judgment, and with the greatest expedition: So help me God."—(h.)

XXXIV. If any person shall sell, or expose for sale, to any merchant, factor, or other person, at any port or place of exportation within this state, any casks, or barrels, of rice, which,

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(o)—See last section of this chapter (d)—1746, P. L. p. 209. (g)—Ibid. p. 209—See last section. (h)—Ibid. p. 210.

upon opening or uncasking the same, shall be found to contain any unfair or fraudulent mixture of small or damaged rice, every such seller, or person offering the same for sale, shall immediately, on request of the buyer, or person offering to buy the same, name one freeholder, and the buyer another, to view the said rice : and if such two persons shall agree in opinion, and certify the same in writing, under their hands, that such rice was deceitfully and fraudulently packed and exposed for sale, every such cask or barrel so condemned shall be forfeited to the state, and the same shall be sold by the public treasurer, or by the persons who shall have condemned the same, and the money arising therefrom paid into the public treasury ; which persons shall be allowed thereout five per cent. for their trouble : Provided that if the seller shall refuse to nominate a person to view the said rice, then the buyer shall nominate both the persons to view such rice, who shall have the same power as if one had been nominated by the seller, and one by the buyer : And provided also, that in case the said persons so nominated, shall not agree in opinion, they shall have power to nominate a third person, being a freeholder, who shall have the same power as the first two : And in case either of the said two persons shall refuse or neglect to join, or cannot agree, in nominating such third persons, then any justice of the peace, on notice given by both or either of the said persons, shall nominate such third person : which third person shall have the same power in the premises, as if he had been nominated by both : And provided lastly, that such adjudication and certificate shall be made within twenty-four hours from the first application : And the said certificate shall be deemed a sufficient condemnation of the said rice to warrant the sale thereof, as aforesaid.—(m.)

XXXV. Whenever any rice, pitch, or rosin, shall be sent from any plantation under the care or management of an overseer, or manager, where the employer does not then live, nor shall happen to be present, which shall be forfeited, as aforesaid, on account of any unfair or fraudulent mixture, the loss of the rice, pitch, or rosin, so forfeited, shall fall upon the overseer, or manager of the plantation, where the same was packed as aforesaid : And the master, or owner, of the said plantation, shall have power to deduct the value of the rice, pitch, or rosin, so forfeited, out of the wages, share, or stipend of such overseer, or manager, or recover the same by legal process, if he shall think proper ; unless such overseer or manager shall make it appear by the evidence of some white person, that, to the best of his, the said white person's, opinion and belief, the barrels, which contained the same, were well headed and nailed, or pegged in his presence, and that he saw the rice, pitch, or rosin, fairly packed and filled in the same.—(n.)

(m)—1746, P. L. p. 208—see also last section. (n)—Ibid, p. 209.

## INTEREST.

**XXXVI.** All staves to be made for exportation, and all shingles which shall be offered for sale in this state, shall be made of good sound timber, and shall be of the following dimensions, to wit: each pipe stave to be made of white oak, fifty-eight inches long, and not less than three fourths of an inch thick at the thin edge, and four inches broad, clear of sap: And each barrel stave, of red or white oak, to be thirty inches long, not less than half an inch thick at the thin edge, and four inches broad, clear of sap: Each hogshead stave to be made of white or red oak, forty-two inches long, not less than three-fourths of an inch thick at the thin edge, and four inches broad, clear of sap: And each shingle to be twenty-two inches in length, and not less than half an inch thick at the thick end, and well shaved, so as not to be winding, and not less than three and a half inches broad, clear of sap: And in case there shall be any dispute between the buyer and seller of any staves, or shingles, concerning the quality of them, the same shall be determined by the packers of the port, or place, where such dispute may happen.—(a).

**XXXVII.** There shall be no inspection in Georgetown, or Charleston, of produce, naval stores, lumber, or other articles (tobacco excepted) brought to market from the interior country, unless the persons bringing to market and offering the same for sale, do consent to the inspection thereof; in which case the inspector shall, as heretofore, receive such fees as are by law established.—(b.)

## INTEREST.

No person shall, upon any contract, directly or indirectly, for loan of any money, wares, merchandizes, or other commodities whatsoever, take above the value of seven dollars for the forbearance of one hundred dollars for one year; and so after that rate for a greater, or less sum, or a longer, or shorter time, for goods, wares, and commodities, lent, and to be repaid in goods, wares, or commodities, or in monies: And all bonds, specialties, contracts, promises, and assurances whatsoever, made for payment of any principal, or money, or goods, wares, or commodities, as aforesaid, to be lent, or covenanted to be performed, upon, or for, any usury, whereupon, or whereby, there shall be reserved, or taken, above the rate of seven in the hundred, as aforesaid; and so according to that rate and pro-

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(a)—1746, P. L. p. 210. (b)—1810, Sess. Acts, p. 67.

portion, if goods, wares, merchandizes, and commodities are lent, as aforesaid, shall be utterly void and of no effect: And every person who, upon any contract, shall take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, shift, or interest of any monies, wares, merchandizes, commodities, or other things whatsoever; or by any deceitful way or means, for the forbearing or giving day of payment for one whole year, of, or for, money, or other thing, above the sum of seven dollars for the forbearing of one hundred dollars for one year, and so after that rate for a greater, or less, sum, or for a longer, or shorter, time, and so after that rate or proportion for the other goods, wares, or commodities, where such shall be lent, contracted or agreed for, taken, accepted or received, shall forfeit and lose, for every such offence, the triple value of the monies, wares, merchandizes, or other things so lent, bargained, exchanged, shifted, or taken; one half of which forfeiture shall be paid to the commissioners of the public treasury for the use of the state, and the other half to him, or them, that will inform, and sue, for the same; to be recovered with full costs of suit, in any court of record in this state, by action of debt, bill, or plaint: Provided, that every such action by bill, or plaint, as aforesaid, shall be commenced and sued in the lender's life time, and within six months after the commission of the offence.—(a.)

II. In all cases whatsoever, where any suit or action shall be brought in any court of record in this state, touching or concerning any usurious bond, specialty, promise, contract, agreement, or taking of usury, or higher rate of interest, than is allowed by this act, the borrower, or party to such usurious bond, specialty, contract, promise, or agreement, or from whom such higher rate of interest is, or shall be, demanded, had, or taken, shall be a good and sufficient witness in law to give evidence of such offence: Provided that, if the person, against whom such evidence is offered to be given, will deny, upon oath, in open court to be administered, the truth of what such witness offers to swear against him, then such evidence shall not be admitted. And if any witness, or party, shall forswear himself in any such matter, and be thereof lawfully convicted, he, or she, shall suffer all the pains and penalties by law inflicted on persons convicted of wilful and corrupt perjury.—(b.)

III. Every scrivener, broker, attorney, solicitor, and driver of bargains for contracts, who shall receive, directly, or indi-

(a)—1777, P. L. p. 236. A sum of money, exceeding the legal rate of interest, given for forbearance of payment, cannot be recovered back; nor will it render a contract usurious.—*2 Nott & M'Cord*, p. 133.—*Miles vs. McCallan*.

Where partial payment is made of a debt, upon which interest has accrued, the payment is to be deducted from the aggregate of principal and interest, so as, first to extinguish the interest, leaving the balance, principal.—Administrators of Norwood, *ads* Manning. *2 Nott & M'Cord*, p. 295.

(b)—1777, P. L. p. 236.

rectly, any sum of money, or other reward or thing for brokerage, soliciting, driving, or procuring the loan, or forbearing, of any sum or sums of money, or for any rice, wares, merchandize, or other commodities whatsoever, over and above the rate, or value, of one dollar for the loan, or forbearing, of one hundred dollars of money, or the like value in rice, wares, merchandize, or other commodities whatsoever, and so rateably; or above one dollar, for making, or renewing, the bond or bill concerning the same, shall forfeit, for every such offence, sixty dollars, and have six months imprisonment; one moiety of all the forfeitures, [recovered under this section.] to be to the use of the state, and the other moiety to him, or them, who will sue for the same, in any court of record within the same, by action of debt, suit, bill, or plaint; wherein no privilege, injunction, or stay of prosecution shall be allowed.—(a.)

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### INTESTATES' ESTATES.

WHERE any person possessed of, interested in, or entitled to, any real estate, in his, or her, own right, in fee simple, shall die without disposing thereof by will, the same shall be distributed in the following manner, to wit: If the intestate shall have a widow, and one, or more children, the widow shall take one third of the said estate, and the remainder shall be divided between the children, if more than one; but if only one, the remainder shall be vested in that one absolutely.—(c.)

II. The lineal descendants of the intestate shall represent their respective parents, and be entitled to receive and divide, equally among them, the shares to which their parents, respectively, would have been entitled, had they survived the ancestor.—(c.)

III. If the intestate shall not leave a child, or other lineal descendant, but shall leave a widow, and father, or mother, the widow shall be entitled to one moiety of the estate, and the father, or, if he be dead, the mother, shall be entitled to the other moiety.—(c.)

IV. If the intestate shall not leave a lineal descendant, father, or mother, but shall leave a widow, and brothers and sisters, or brother, or sister, of the whole blood, the widow shall be entitled to one moiety of the estate, and the brothers and sisters, or brother, or sister, to the other moiety, as tenants in common; the children of a deceased brother, or sister, taking, among

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(a)—1721, P. L. p. 112. (c)—1791, 1st Faust, p. 24.

them respectively, the share, which their ancestors would have been entitled to, had such ancestors survived the intestate.—(a.)

V. If the intestate shall leave neither wife, child, nor children, nor lineal descendant, but shall leave a father, or mother, and brothers-and sisters, one or more, the estate, real and personal, of such intestate, shall be equally divided amongst the father, or, if he be dead, the mother, and such brothers and sisters, as may be living at the time of the death of such intestate; so that such father, or mother, as the case may be, and each brother and sister so left living by the intestate, shall take an equal share of his estate: Provided always, that the issue, if any, of any deceased brother, or sister, if more than one, shall take, amongst themselves, the same share, which their father, or mother, if living, would have taken: And if but one such issue, then he, or she, shall take the share, which his, or her, father, or mother, would have taken if living.—(b.)

VI. If the intestate shall leave no lineal descendant, father, mother, brother, or sister, of the whole blood, but shall leave a widow, and brother, or sister, of the half blood, and a child, or children, of a brother, or sister, of the whole blood, the widow shall take one moiety of the estate, and the other moiety shall be equally divided amongst the brothers and sisters of the half blood, and the children of the brothers and sisters of the whole blood; the children of every deceased brother, or sister, of the whole blood, taking, among them, a share equal to the share of a brother, or sister, of the half blood: But if there be no brother, nor sister, of the half blood, then a moiety of the estate shall descend to the child, or children, of the deceased brother, or sister: And if there be no child of a deceased brother, or sister, of the whole blood, then the said moiety shall descend to the brothers and sisters of the half blood.—(c.)

VII. If the intestate shall leave no lineal descendant, father, mother, brother, nor sister, of the whole blood, nor their children, nor brother, nor sister, of the half blood, nor lineal ancestor, then the widow shall take two thirds of the estate, and the remainder shall descend to the next of kin.—(c.)

VIII. If the intestate shall leave no lineal descendant, father, mother, brother, or sister, of the whole blood, or their children, or brother, or sister, of the half blood, then the widow shall take one moiety, and the lineal ancestor, or ancestors, if there be any, the other moiety.—(c.)

IX. If the intestate shall leave no widow, the provision made for her shall go as the rest of his estate is directed to be distributed in the respective clauses, in which the widow is provided for.—(c.)

(a)—1791, 1st Faust, p. 24. (b)—1797, Dec. 16, 2d Faust, p. 147.

(c)—1791, 1st Faust, p. 25.

X. In reckoning the degrees of kindred, the computation shall begin with the intestate, and be continued up to the common ancestor, and thence down to the person claiming kindred, inclusively, each step being reckoned one degree.—(c.)

XI. On the death of any married woman, the husband shall be entitled to the same share of her real estate, as is given to the widow out of the estate of the husband, and the remainder of her real estate shall be distributed amongst her descendants and relations in the same manner, as is directed in case of the intestacy of a married man.—(d.)

XII. If the intestate shall leave no husband, the provision made for him shall go as the rest of the estate.—(d.)

XIII. In all cases of intestacy, personal estate shall be distributed in the same manner as real estate.—(d.)

XIV. Where any child, or issue, of the intestate shall have been advanced by the intestate, in his life time, by a portion, or portions, equal to the share, which shall be allotted to the other children, such child, or issue, or his, or her, legal representatives, shall not be entitled to a share of his, or her, ancestor's estate; but in case any child, or the issue of any child, so advanced, shall not have received a portion equal to the share, which shall be due to the other children, (the value of which portion being estimated at the death of the ancestor, and so that neither the improvements of the real estate, by such child, or children, nor the increase of the personal property, shall be taken into the computation,) then so much of the estate of the intestate shall be distributed to such child, or issue, as shall make the estate of all the children equal.—(d.)

XV. No land, or personal estate, which shall be acquired by any person after the making of his, or her, will, shall pass thereby, unless the said will be re-published; but every such person shall be considered as having died intestate as to the said lands and personal estate, and the same shall be distributed according to the foregoing directions.—(g.)

### JOINT TENANCY AND TENANCY IN COMMON.

ALL joint tenants, or tenants in common, of estates of inheritance in their own rights, or in right of their wives; and all joint tenants, or tenants in common, for term of life, or years,

(c)—1791, 1st Faust, p. 25. (d)—Ibid, p. 26. (g)—Ibid, p. 27. So much of this section as relates to personal property, repealed by A. A. 1808, Dec. 15—Sess. Acts, p. 59.

**with others who have estates of inheritance, or freehold, in any lands, or tenements, or hereditaments, shall be compellable to make partition between them of such lands, tenements, or hereditaments; but no such partition shall be prejudicial to any person entitled to the reversion, or remainder, after the death of a tenant for life, or after the expiration of any term of years.—(n.)**

**II. When any person shall be, at the time of his, or her, death, seized, or possessed, of any estate, in joint tenancy, the same shall be adjudged to be severed by the death of the joint tenant, and shall be distributable as if the same were a tenancy in common.—(o.)**

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### JUDGMENTS.

**ALL judgments and decrees of the courts of law and equity in this state, hereafter to be obtained and rendered on any judgment, bond, bill, promissory note, or other cause of action, bearing interest, on which such judgment shall be obtained and rendered, shall continue to bear the same interest, as the original cause of action did bear before the entry of judgment thereon; and, in the body of every execution hereafter to be issued on such judgment or decree, the sheriff, or other officer, who may be required to execute the same, shall be directed, by virtue of such execution, to levy the interest, which shall accrue on the principle of the said debt, obligation, or other security, on which the said judgment, or decree, has, or may be had, or rendered, up to the day, on which such levy shall be made, and satisfaction entered on said execution.—(a.)**

**II. The interest, which shall accrue on any judgment, or decree, after the same has been entered up, shall have the same lien on the estate of the defendant, or person liable to pay the same, from the time of the accrual of such interest only, as the original judgment, or decree, or execution, thereon issued, shall have.—(b.)**

**III. It shall be lawful to issue execution on any judgment, or decree, of any court of law or equity in this state, at any time within three years next after the signing, or enrollment thereof, without any renewal of the same.—(b.)**

**IV. All assignees of judgments, and decrees, of any court of law or equity, shall be authorized to bring suit thereupon, in their own names, styling themselves assignees, in the same man-**

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(n)—P. L. p. 53-54. (o)—1791, 1st Faust, p. 27. (a)—1815, Sess. Acts, p. 39. (b)—*Ibid*, p. 40.

mer, and subject to the same equities, as the assignees of lands, bills, and notes, not negotiable.—(c.)

V. Every person, who shall have received full payment, or satisfaction, or to whom a legal tender shall have been made, of his, or their debt, damages, costs and charges, recovered by judgment, or decree, in any court of law or equity in this state, or secured by mortgage of real, or personal estate, shall, at the request of the defendant, or defendants, in the action, or of the mortgagor, or mortgagors, or of his, her, or their, legal representative, or of any other person, being a creditor of the said debtor, or a purchaser under him, or having an interest in an estate bound by such judgment, decree, or mortgage, and on tender of the fees of office, for entering such satisfaction, within three months after such request made, enter satisfaction in the proper office on such judgment, decree, or mortgage, which shall, forever thereafter, discharge and satisfy the same; and if such person, having received such payment, satisfaction, or tender, as aforesaid, shall not, within three months, by himself, or his attorney, after request, and tender of fees of office, repair to the said office, and enter satisfaction, as aforesaid, he, she, or they, refusing or neglecting so to do, shall forfeit and pay unto the party, or parties, aggrieved, a sum of money not exceeding one half of the amount of the judgment, decree, or debt secured by mortgage, as aforesaid, to be recovered by action of debt, in any court of competent jurisdiction within the state; and, on judgment being rendered for the plaintiff, in any such action, it shall be the duty of the presiding judge, to order satisfaction to be entered on the judgment, or mortgage, aforesaid, by the clerk, or register, or other proper officer, whose duty it shall be, on receiving such order, to record the same, and to enter satisfaction accordingly.

VI. Every person, who shall be indebted by judgment, decree, or mortgage, shall be authorized to apply to the presiding judge of any court of general sessions and common pleas, to be held in the district, in which such judgment, or mortgage, shall be entered, or recorded, for a rule, to shew cause, why satisfaction should not be entered thereon. And it shall be the duty of such judge, to grant such rule, returnable on a day, to be fixed by him; which rule shall be served on the plaintiff, or his legal representatives, or his, or their, attorney: And if the party so served, shall not attend, to shew cause, or attending, shall shew insufficient cause, and the judge shall be satisfied that the judgment, or mortgage, aforesaid, has been fully paid, it shall be his duty to order the proper officer to enter satisfaction on the said judgment, or mortgage, as the case may be; but, if, on the return of the said rule, it shall appear to the presiding

**Judge, that matters, proper for the decision of a jury, are involved in the case, he may, at the request of either party, submit the same to the jury, to be decided immediately, in a summary manner, and if the jury shall decide that the judgment, or mortgage, has been paid, satisfaction shall be ordered accordingly.**

**VII. It shall be lawful for any debtor, in the presence, and with the consent, of his creditor, or of his, or her, agent, to go before the clerk of sessions and common pleas, of any district in this state, in which such debtor usually resides, and confess a judgment, on any bond, note, or book account, under the conditions and regulations, hereinafter prescribed.—(a.)**

**VIII. It shall be the duty of the said clerk, on the application of any debtor, and creditor, to confess any judgment, on the production of the evidence of the debt, and the creditor's swearing that such debt is fairly and bona fide due, and that such confession is not for the purpose of defrauding the just creditors of the said debtor, to transcribe, in a book, to be kept by him, for that purpose, the note, bond, or account, and file the original, in which book, he shall cause to be written, under the copy of such note, bond, or account, a confession to the following effect, to-wit:**

**STATE OF SOUTH CAROLINA,** } To all whom it may concern:  
District. }

I, A. B. do hereby confess that I am fully indebted to C. D. in the sum of      dollars, it being the amount of the bond, (note or account,) above transcribed, and interest thereon, (if any.) Given under my hand, the      day of      in the year of our Lord, one thousand eight hundred and

(Signed)

A. B.

In the presence of J. G. C. C. Pleas.  
Which confession, from the date thereof, shall create a lien upon the lands and tenements, of such debtor, and, as against subsequent purchasers, and judgment creditors, shall bear date from the day of signing, as aforesaid.

**IX. It shall be lawful for the said clerk, or any attorney, of the said court, to issue an execution against the property, or body of such confessing debtor, as if such judgment was founded on any verdict, or decree, rendered in open court, and in like manner shall bind the goods and chattels of the defendant.**

**X. It shall be the duty of the judges of the court of common pleas, to cause the records of all the judgments entered, as aforesaid, to be read from the said book, by the clerk of the said court, on the first day of the next succeeding term, for the greater publicity thereof: And it shall be lawful for any person, who may be aggrieved, by the said confession of judgment, to file a suggestion in the said court, at any time, setting forth that**

**JUDICATURE.**

such confession is fraudulent, and not founded on bona fide consideration; and an issue shall be made up on the said suggestion, and the same shall be tried by a jury: And should the jury, by their verdict, find the said confession to be fraudulent, the judges shall order the said confession to be set aside.

XI. The following, and no other, fees shall be charged, on any judgment confessed, as aforesaid, viz: To the attorney, or clerk, for issuing the execution, the same fees, as are now allowed by law: To the clerk, for all other services in relation to the said confessed judgment, if the same be for less than fifty dollars, one dollar; if more than fifty dollars, two dollars.—(a.)

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**JUDICATURE.**

THIS state shall be divided into the several districts herein after described, to wit: Abbeville district, to comprehend the county of that name, according to its present limits; Edgefield district, to comprehend the county of that name, according to its present limits; Newberry district, to comprehend the county of that name, according to its present limits; Laurens district, to comprehend the county of that name, according to its present limits; Pendleton district, to comprehend the county of that name, according to its present limits; Greenville district, to comprehend the county of that name, according to its present limits; Spartanburg district, to comprehend the county of that name, according to its present limits; Union district, to comprehend the county of that name, according to its present limits; York district, to comprehend the county of that name, according to its present limits; Chester district, to comprehend the county of that name, according to its present limits; Lancaster district, to comprehend the county of that name, according to its present limits; Fairfield district, to comprehend the county of that name, according to its present limits; Kershaw district, to comprehend the county of that name, according to its present limits; Richland district, to comprehend the county of that name, according to its present limits; Chesterfield district, to comprehend the county of that name, according to its present limits; Marlborough district, to comprehend the county of that name, according to its present limits; Darlington district, to comprehend the county of that name, according to its present limits; Sumter district, to comprehend the three counties of Claremont, Clarendon, and Salem, according to their present

units; Williamsburg district, to comprehend the present county of that name; Horry district, to comprehend the county called Kingston, according to its present limits; Marion district, to comprehend the county called Liberty, according to its present limits; Georgetown district, to comprehend the former district of Georgetown, except Marion district aforesaid; Charleston district, to comprehend the former district of Charleston, except Colleton district; Colleton district, to comprehend the parishes of St. Paul, St. Bartholomews, and St. George, (Dorchester;) Orangeburg district, to comprehend the whole of the former district of Orangeburg, except Barnwell district; Lexington district, to comprehend that part of Lexington county, which lies north of North Edisto river; Barnwell district, to comprehend that part of the former district of Orangeburg, which lies between South Edisto and Savannah rivers; and Beaufort district, to comprehend the present district of that name.—(b.)

H. The several courts of Charleston district, Georgetown district, Horry district, and Williamsburg district, shall form one circuit, to be called the eastern circuit: the several courts of Colleton district, Beaufort district, and Barnwell district, shall form one circuit, to be called the southern circuit: the several courts of Orangeburg, Edgefield, Newberry, Richland, and Lexington, shall form one circuit, to be called the southern circuit: the several courts of Abbeville, Pendleton, Greenville, Spartanburg, and Laurens, shall form one circuit, to be called the western circuit: the several courts of Union, York, Chester, Lancaster, and Fairfield, shall form one circuit, to be named the middle circuit: and the several courts of Sumter, Darlington, Marion, Marlborough, Chesterfield, and Kershaw, shall form another circuit, to be called the northern circuit.—(c.)

III. In each of the districts aforesaid, there shall be held, by one or more of the associate judges of this state for the time being, at such places as shall be appointed for the same, a court of sessions, and a court of common pleas, to possess and exercise, respectively, each court in its respective district, the same powers and jurisdictions, in all causes and matters, civil, or criminal, arising in this state, in as full and ample a manner, as any judges or justices of the court of kings-bench, justices of assize, justices of oyer and terminer and gaol delivery, or any court of general or quarter sessions of the peace, or as the court of common pleas at Westminster, may or can lawfully possess and exercise in the kingdom of Great Britain, so far as the same shall be consistent with the laws of this state.—(d.)

(b)—1798, 2d Faust, p. 238. (c)—2d Faust, pp. 241, 263, 543, 545, 548. Acts, 1815, p. 51—Ibid, 1816, p. 21. (d)—1798, 2d Faust, p. 240—See also P. L. p. 100, 128, 144, 269, and 487.

IV. The said courts shall be held at the following times and places, that is to say : For Abbeville district, at Abbeville court house, for York, at York court house, for Darlington, at Darlington court house, on the third Mondays in March and October in every year : for Richland, at Columbia, on the fourth Mondays in March and October in every year, to sit two weeks : for Lexington, at Lexington court house, on the second Monday after the fourth Monday in March and October, and sit one week ; for Fairfield, at Fairfield court house at the same time, to sit two weeks if necessary ; for Sumpter, at Sumpter court house, on the first Monday in March and October in every year, and continue to sit two weeks at every time, if so much time be necessary ; for Newberry, at Newberry court house, on the third Monday in March and October ; for Pendleton, at Pendleton court house, for Chester, at Chester court house, and for Marion, at Marion court house, on the fourth Mondays in March and October in every year ; for Edgefield, at Edgefield court house, and for Union, at Union court house, on the first Monday in March and October, and sit two weeks if necessary ; for Greenville, at Greenville court house, for Lancaster, at Lancaster court house, and for Marlborough, at Marlborough court house, on the first Mondays after the fourth Mondays in March and October in every year : for Spartanburg, at Spartanburg court house, and for Chesterfield, at Chesterfield court house, on the second Monday after the fourth Monday in March and October in every year : for Barnwell district, at Barnwell court house, on the first Monday after the fourth Monday in March and October : for Laurens, at Laurens court house, for Kershaw, at Kershaw court house, and for Orangeburg district, at Orangeburg, on the third Monday after the fourth Monday in March and October in every year : for Charleston district, at Charleston, on the third Monday of January in every year, and continue to sit four weeks, if so much be necessary ; and on the second Monday in May of every year ; and continue to sit six weeks, if so much be necessary ; and on the first Monday in October of every year, and continue to sit two weeks, if so much be necessary : for Williamsburg district, at Williamsburg court house, on the third Monday in March, and on the first Tuesday after the third Monday in October, in every year : for Horry court house, on the first Monday after the fourth Monday in March and October in every year, and to continue in session, not more than three days : for Georgetown district, at Georgetown, on the second Monday after the fourth Monday in March and October in every year : for Colleton, at Walterborough, on the first Tuesday after the second Monday after the fourth Monday in March and October in every year, to continue in session, five days if necessary : and for Beaufort district, at

**C**oosawhatchie, on the second Monday after the fourth Monday in March and October in every year.—(g.)

**V.** Each of the said courts shall sit and adjourn from day to day, not exceeding six days, till the business thereof is dispatched, if it can be done at that time; but if not, what remains unfinished shall be continued or adjourned to the next court; except Charleston district, where the court shall sit not more than five weeks; and except also, the courts of Colleton, Beaufort, and Williamsburg, which shall sit not exceeding five days, and Horry district, which shall sit not exceeding four days.—(h.)

**VI.** The said courts shall be courts of record; and all persons necessarily going to, attending on, or returning from, the same, shall be free from arrests in any civil action.—(m.)

**VII.** The attorney-general shall attend each of the district courts composing the eastern circuit, and prosecute and conduct all suits and prosecutions in behalf of the state, in each of the said courts; and the several solicitors for the other circuits shall attend the courts of the districts composing the circuits, for which they shall be, respectively, appointed, and prosecute therein all suits and prosecutions on behalf of the state.—(b.)

**VIII.** The governor shall commission, as clerks of the said courts, respectively, such persons, as shall be elected by a majority of all the votes given in joint ballot of both branches of the legislature, for the term of four years, and until a successor shall be elected (o); and every such clerk shall, before he is commissioned as aforesaid, give bond in the sum of eight thousand dollars, with not less than two, nor more than ten sureties, to be approved by commissioners for that purpose appointed, payable to the treasurers of the state, and their successors, and deposit the said bond in the office of one of the said treasurers: and it shall be lawful for any person, body politic or corporate, to sue such bond for any breach of the condition thereof; and the treasurers for the time being, or either of them, shall, on application to him, or them, for that purpose made, deliver a copy of such bond by him, or them, certified; which copy so certified, shall be sufficient evidence of such bond in any of the courts of this state.—(c.)

**IX.** Every clerk shall have power to appoint a sufficient deputy, or deputies, to execute his office, in case of absence, or indisposition, for whose conduct he shall be answerable; and such clerk, and his deputy, or deputies, shall take the oath of allegiance, and the following oath in open court, and give the security above required, previous to entering upon his office;

(e)—2d Faust, p. 240, and divers subsequent acts. (h)—1798, 2d Faust, p. 241—2d, & Sess. Acts, 1805, p. 5—(m)—ibid., p. 242. (b)—2d Faust, p. 241. (o)—1812, Sess. acts, p. 35. (c)—1799, 2d Faust, p. 267.

and if any person shall take upon himself to act either as clerk or deputy, without being duly qualified, he shall forfeit and pay a sum not exceeding two thousand one hundred and forty-three dollars, to be recovered by any person who will sue for the same : I, do solemnly swear, (or affirm,) that I will well and faithfully do and perform the several duties enjoined upon me by law, as clerk, (or deputy clerk,) of the district court of according to the best of my knowledge and ability ; that I will make a true and perfect entry and record of all orders and proceedings of the said court, without fraud, or deceit, and that I will not take any other, or greater, fees than such as are allowed by law : So help me God.—(d.)

X. If there shall, at any time, be a vacancy in the office of clerk of the court of common pleas in any of the districts, by reason of death, resignation, or otherwise, and the same shall not be filled up as by law directed, in time for the sitting of the court, the judge or judges presiding at such court, shall appoint a proper person to act as clerk, during the sitting thereof.—(e.)

XI. The clerk of any court may qualify, and take the oaths prescribed by law before any two justices of the quorum of the district, for which he is appointed.—(m.)

XII. The clerks of all courts shall give constant attendance at their respective offices, either by themselves, or their deputies : and shall keep their said offices in the city, town, or village, respectively, where the court houses are established.—(n.)

XIII. None of the said clerks, or their deputies, shall act as an attorney, or solicitor, in any court of justice in this state.—(h.)

XIV. The said clerks and their deputies, upon qualifying, as herein before directed, shall make a fair entry of their commissions and deputations in the record books of their respective district courts, and shall also make an entry of the day, on which they shall have so, respectively, qualified.—(h.)

XV. It shall be the duty of the clerks of the district courts, respectively, on each day, previous to adjournment of the court, to read over to the judge or judges, who may preside, the minutes or entries, which shall have been made during the day, in the journals of the said courts.—(a.)

XVI. It shall be lawful for the several clerks and registers of the courts of justice, and sheriffs throughout the state, to collect and receive their own fees from the different suitors, or persons, who are liable to pay the same, except where the plaintiff or complainant shall reside in foreign countries, or without the limits of this state : in which case, his, or her, agent, or attorney, shall be answerable for the payment of the said fees ; (o)

(d)—1789, P. L. p. 438. (e)—1790, 2<sup>d</sup> Faust, p. 319. (m)—1799, 2<sup>d</sup> Faust, p. 322. (n)—1791, 1<sup>st</sup> Faust, p. 22. (h)—1789, P. L. p. 488. (s)—1792, 1<sup>st</sup> Faust, p. 211. (o)—1791, 1<sup>st</sup> Faust, p. 22.

~~and in all cases of suits ended, abated, compromised, settled or determined, before judgment, or out of court, the said clerks shall immediately have a right to issue executions for their fees.~~—(p.)

XVII. If any clerk shall wilfully make any false entry, or alter any record in his keeping, belonging to his office, he shall be amerced and imprisoned at the discretion of the court; and shall, moreover, be liable to the action of the party grieved, within two years after the commission of the offence, if the party aggrieved be of full age, and, if within age, then within two years after he shall come to full age.—(g.)

XVIII. It shall be the duty of the associate judges of this state for the time being, once in every three years, to cause new jury lists to be made from the tax returns of the several districts for the preceding year; which tax returns the sheriff of each district shall procure from the tax collector thereof, who shall deliver the same, without delay, to such sheriff; and the judge or judges attending at such court shall cause to be therefrom transcribed, the names of such persons, as are entitled by the constitution of this state to vote for members of the state legislature, and put the same into the division of the jury box numbered 1. (c) And each of the said judges, at any time during the term, at which it may be necessary to provide for the making of a new jury list, may, by rule of court, order and direct the several tax collectors within the district, to furnish to the sheriff of the district, by a day therein to be mentioned, the names of the inhabitants entitled, agreeably to the constitution, to vote for members of the legislature, within the said district; a copy of which rule the sheriffs of the said districts, respectively, shall cause to be served upon each tax collector within the district; and upon neglect, or refusal, of any tax collector to obey the exigence of such rule, and proof that a copy thereof had been duly served upon him, he shall be liable to be punished by the said court, as for a contempt.—(d.)

XIX. One, or more, of the said judges, during the time of holding each of the said district courts, shall cause to be drawn by a child under the age of ten years, the names of twenty-four persons, to serve as grand jurors, and the names of forty-eight persons to serve as petit and common pleas jurors; out of the said division of the jury box numbered 1, to serve as grand, petit, and common pleas jurors, at the next succeeding court for such district; (n) and the said judge or judges shall cause the clerk of the court diligently to enter the name of every juror, as he shall be drawn, into two distinct pannels or columns, in the dock-

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(p)—1795, 2d Faust, p. 33. (g)—1712, P. L. p. 36. (c)—1799, 2d Faust, p. 254. (d)—1792, 1st Faust, p. 212. (n)—1799, 2d Faust, p. 235.

ets, or record books, of the courts of sessions and common pleas, respectively; and the said clerk shall annex a panel or roll of the names of the said jurors fairly and exactly transcribed from the said dockets or books, to the writ of *venire facias* to be issued for summoning the said jurors; in the mandatory part of which writ shall be inserted the following words, to wit; "The several persons named in the panel to this writ annexed;" and the said clerk shall forthwith deliver the said writ with the panel annexed, to the sheriff of the district, in order to summon the jurors therein named, to be and appear at the said court of sessions and common pleas, to be held at the time and place by law appointed, next after the teste of the said writ (a): And out of the whole number so drawn and summoned, as petit and common pleas jurors, for each of the said districts, two jurors shall always be formed, whose duty it shall be well and truly to try all the issues, with which they may be charged, and to execute all the writs of enquiry, which may be delivered to them, respectively; (b) and in case any of the jurors so drawn shall be challenged, and the challenge allowed, or shall absent themselves, or neglect to appear, other persons shall be drawn out of the said box, to fill up the said jury.—(d.)

XX. Every person, who shall be drawn to serve, and shall attend to serve, at any court in this state, as a petit juror, shall receive, for his services, one dollar per day, for every day he shall so attend as a common plea and petit juror: And each constable, throughout this state, shall, for his services in attending the duties of his office, at any court in this state, receive one dollar, per day, for each day he shall so serve: Provided that not more than five constables shall receive pay for services at any one court, except at the court in Charleston; where not more than nine shall receive pay for their services: And immediately after the conclusion of each court, where common plea and petit jurors serve, each juror shall, before the clerk of such court, prove, on oath, the number of days he shall have served, or attended to serve, as petit juror at such court. And each constable that shall have actually served at such court as constable, shall prove on oath to the satisfaction of the clerk of such court, the number of days he shall actually have so served: And it shall be the duty of each clerk of said court, at the conclusion of each court, to make out a roll of the petit jurors and constables, that shall have attended as aforesaid, at such court, exhibiting the name, time of service, and amount due such petit juror and constable, and the term, at which the service was performed, and shall enter the same on the minutes of the court of the census when such service shall be performed, and shall, forth-

(a)—173 P. L. p 124. (b)—1791 1st Faust, p. 163. (d). 1731 P. L. p. 124. Talesmen may be, also, drawn to serve as grand jurors, P. L. p. 470.

with, transmit to the Comptroller of the state a certified copy of such jury and constable roll; and shall furnish each petit juror and constable with a certificate in the following form: State of South Carolina. I A. B. clerk of the court of sessions and common pleas for district, in the said state, do certify that attended as a petit juror, (or actually served as a constable, as the case may be) for said district days at term A. D. and is entitled to receive for the same dollars; each of which certificates shall be signed by the clerk of the court, who shall issue the same, and countersigned by the judge, who shall have presided at the court, where such services shall have been performed: And such certificates shall be payable at the treasury of the upper, or lower division, of this state, on demand, and shall be received by any tax collector of this state in payment of state taxes. And each clerk shall be entitled to receive from the state, for the services hereby imposed, five dollars per week.—(c.)

**XXI.** When both parties are desirous of having their cause tried by a special jury, it shall be lawful for the judges of the court of common pleas, after the common docket shall have been disposed of, to try, by special jury, any cause, which the parties are desirous of having so tried; and such special juries shall be drawn in the following manner, to wit: Each party, plaintiff and defendant, shall give in, or deliver to the other, the names of any eighteen persons having the qualification of grand jurors, whom he, she, or they, would choose for jurors in the case controverted, out of which lists each party shall strike the names of such eight persons, whose names were given in by the other party, as he, she, or they, may choose to reject; and out of the ten persons remaining on each list, each party shall mark or name such four persons on the list of the adverse party, as he, she, or they, may think fit to have summoned as talesmen: And the twenty men, who shall be chosen for jurors and talesmen, shall be summoned by the sheriff of the district, in which the case is to be tried, at least six days (or any shorter time if the parties consent thereto) before the meeting of the court in the said district, to attend the said court as a special jury and talesmen, if occasion shall require; and if all the twelve men, who shall be summoned for the special jury, shall not attend at the court, at the time, to which they shall be summoned, then out of those, who shall be summoned as talesmen, and shall attend as such, each party shall, out of the talesmen of the adverse party, choose so many as shall be requisite to make up, together, with his, her, or their, own special jurymen, as shall have attended, agreeably to their summons; the number of six; to the end, that, in every cause tried by a special jury,

each party may have six jurymen of his, her, or their, own choice; but, if out of the ten men, summoned as special jurors and talesmen, on behalf of each party, in any cause, six men shall not appear on behalf of both, or either of, the parties, then each shall, instanter, give in to the court, the names of so many men, from the vicinity of the court house, as will make three times the number wanted to make up his, her, or their complement, of six jurors, who shall be immediately summoned by the sheriff of the district, to give their attendance; and out of the number, who shall attend, each party shall choose as many, as will make up his, her, or their, complement of six jurors: And every jury so drawn, shall constitute a special jury, to try, hear, and determine any such cause, as shall be submitted to them: Provided nevertheless, that nothing herein contained shall debar any person from a legal challenge, to any of the said jurors.—(g.)

XXII. Whenever it shall so happen that none of the judges shall attend and hold any court, during the time appointed by law, it shall be lawful for the clerk and sheriff, of such district, to draw, in open court, and in the presence of one justice of the peace, on the last day of the term, the necessary jurors for the next sitting of such court, in such manner as is, or may be, by law provided; which juries shall be adjudged good and valid to all intents and purposes.—(h.)

XXIII. The sheriff, or his lawful deputy, shall, at least fifteen days before the sitting of each court, serve a summons, in writing, on each jurymen, expressing the time, and court, at which he is to appear, and whether he is to serve as a grand, or petit and common pleas juror, either personally, or by leaving such summons at his dwelling house, or most usual place of residence.—(m.)

XXIV. If any juror, or talesman, who shall be legally summoned to appear, and serve at any of the said courts, shall refuse or neglect so to do, he shall forfeit and pay a sum not exceeding twenty dollars, and seven per cent. on his general tax, for the preceding year, unless such person shall shew good and sufficient cause of excuse, upon oath, to any of the judges, at the

(g)—1791, 2d Faust, p. 148, and 1st Faust, p. 159. (h)—1800, 2d Faust, p. 358. (m)—1731, P. L. p. 126. All judges, or assistant judges, in any of the courts in this state, and all members of the assembly, and officers of any of the courts of justice, during the time they shall be members, and during their continuance in such offices, and all persons exempted by the laws and statutes of Great Britain, shall be exempted, and excused, from serving on juries in this state. P. L. p. 126. Sick and decrepid persons, persons not conversant in the country, and men above seventy years old, infants under twenty-one, physicians, and other medical persons, counsel, attorneys, officers of the courts, and the like; all of whom, if impanelled, must shew their special exemption. Clergymen are also usually excused, out of favor and respect to their function; but if they are seized of lands and tenements, they are, in strictness, liable to be impanelled, in respect of their lay fees. 3 Black. Com. p. 364.

next sitting of the court, after such default, to be levied by warrant of distress under the hand and seal of any of the said judges, and sale of the defaulter's goods, or by an attachment against the body of such offender, to be paid into the public treasury, for the use of the state.—(o.)

XXV. If the sheriff, or his deputy, shall summon any person to appear, and serve, at any court in this state, whose name shall not be inserted in the pannel, annexed to the writ of *venire facias* to the said sheriff directed, or shall return any person, as summoned, who has not been duly summoned, the judge, or judges, for the time being, shall be authorized to set a fine on such sheriff, in the sum of one dollar and seventy cents, for the use of the state, to be recovered by warrant of distress, under the hand and seal of the said judge, or judges, and sale of the offender's goods. (a) And if the sheriff shall neglect to summon any person named in the pannel, annexed to any writ of *venire facias*, to him directed, it shall be lawful for the presiding judge, to set a fine on such sheriff, for every person so neglected to be summoned, in any sum not exceeding one dollar and seventy cents, to be recovered by warrant of distress, under the hand and seal of the said judge, and sale of the said sheriff's goods, to be paid into the treasury, for the use of the state.—(n.)

XXVI. The clerks of the several district courts, shall administer but one oath, to each jurymen, in the court of common pleas, to try all causes, which shall come before them, for trial, during the sitting of the court.—(h.)

XXVII. Jurors shall be allowed, for each civil cause, tried by them, the sum of one dollar and seven cents.—(c.)

XXVIII. The jury boxes shall be locked up with the keys of any one of the judges, and the sheriff of the district, and shall remain in charge of the respective sheriffs.—(d.)

XXIX. Every judge, sheriff, and clerk, who shall fail to have drawn proper jurors for the said courts, shall forfeit, each, the sum of six hundred dollars; one half to the state, and the other half to the informer; to be recovered by action of debt, in any court of common pleas, in this state.—(g.)

XXX. In all actions whatsoever, the original process issuing out of the court of common pleas, shall be by writ to attach the body of the defendant. (e): and all writs, and other process, in civil actions, shall be directed to all and singular the sheriffs of the state of South Carolina, and be served by the sheriff, or his deputy, for the district, where the defendant is found or resides.—(h.)

(o)—1799, 2d Faust, p. 265, and P. L. p. 126. (a)—1731, P. L. p. 126.

(n)—Ibid, p. 126. (b)—1797 2d Faust, p. 152. (c)—1791, 1st Faust, p. 9; see also P. L. p. 116. (d)—1769, P. L. p. 272. (g)—1773, P. L. p. 802. (e)—1731, P. L. p. 109. (h)—1769, P. L. p. 270.

**XXXI.** All judicial process shall be tested in the name of the senior associate judge, and signed by the clerks of any of the district courts of this state, sealed with the seal of the court, from which it issues, and be made returnable to the clerk of the court, to which it shall be returnable fifteen days next before the sitting of such court; and the said process may be served in any district of the state.—(m.)

**XXXII.** In all cases, where bail is not required, a true copy of any writ, or mesne process, issued from the said court, shall be delivered to, or left at the usual place of abode of, the defendant, with some white person, if there be any such person to be found thereat, or otherwise, be left at some obvious part of the house, by the sheriff, or his deputy, at the time of the service of such writ, or process: And, upon every copy of such writ, or mesne process, there shall be written, a notice in words, at length, and in a fair and legible hand, or character, to the following effect, viz: A. B. You are arrested (or served) with this writ, (or process) to the intent, that you may, by your attorney, appear at the court of common pleas, to be holden at the return hereof, being the      day of      in order to make your defence in this action; and that in case of your refusal, or neglect, during the sitting of the court, judgment may be entered against you by default.—(n.)

**XXXIII.** When any sheriff shall return *cepit corpus*, on any writ, to whom directed, he shall, at the same time, endorse on the back thereof, the name, or names, of such person, or persons, as shall become bail for the defendant, if such defendant be let to bail, on pain of being amerced, at the discretion of the court.—(a.)

**XXXIV.** All process lodged for service, and actually served, or copies, left at defendant's place of abode, after the time prescribed by law, for the return of such process, shall not, by reason thereof, be void, but shall be good, for the second court thereafter, in the same manner, as if it had been served, or executed, fifteen days next before the sitting of the said second court.—(b.)

**XXXV.** In all cases, where there shall be two, or more defendants in any action, residing in different districts, the plaintiff may try the same in the court of the district wherein either of the defendants shall reside, be arrested, or taken.—(c.)

**XXXVI.** The courts of general sessions of the peace, of oyer and terminer, assize and general gaol delivery, shall have cognizance, and jurisdiction, of all pleas criminal, where the offence shall be committed within the limits of the respective districts: And the courts of common pleas, of all civil pleas, or ac-

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(m)—1799, 2d Faust, p. 314. (n)—1776, P. L. p. 145; see also 1st Faust, p. 40. (a)—1720, P. L. p. 110. (b)—1792, 1st Faust, p. 214. (c)—1799, 2d Faust, p. 314.

sions, in those districts, where the defendants may reside, to be arrested, or taken, by process, or warrant; and the same shall be heard, tried, and determined, at the said courts, respectively.—(b.)

**XXXVII.** It shall not be necessary for any sheriff to have a witness present, at the service of any *scire facias*.—(d.)

**XXXVIII.** It shall be lawful for a judge, in any of the said courts, to determine, without a jury, in a summary way, on petition, all causes cognizable therein, for any sum not exceeding eighty-five dollars and seventy cents, except where the title of lands may come in question; in which suit the plaintiff, and defendant, shall have the benefit of all matters in the same manner, as if the suit were commenced in the ordinary forms of the common law, or equity; and the presiding judge, or judges, shall give judgment, and award execution, together with costs, against the body, lands, tenements, hereditaments, and leasehold estates, (p) and goods, and chattels, of the party, against whom the same shall pass; but in case both parties shall desire to have the cause tried by a jury, or, on application of either party, at his own expense, the said judges shall order issue to be joined, and the cause to be tried by the jury impanelled at such court. The said petition shall contain the plaintiff's charge, or demand, plainly, and distinctly, set forth, a true copy whereof shall be personally served, or left at the defendant's usual and notorious place of abode, by the sheriff, or his deputy, for the district, where the cause is determinable: And where bail is required, an affidavit shall be made of the debt, and endorsed on the petition; in which case, the sheriff shall take a bail bond, which shall be subject to the order of the court.—(g.)

**XXXIX.** If, in any action commenced, in the court of common pleas, the plaintiff shall not recover above the sum of twelve dollars and twenty four cents, he shall lose all his costs of suit; and no writ of *capias ad satisfaciendum* shall be issued against the body of the defendant, for any debt, or damages, under that sum, except debts due to the state.—(h.)

**XL.** The leaving of a copy writ, or process, at any place, shall not be sufficient to make the party, against whom the same may be issued, a defendant in court in such action, unless the party shall, at that time, be actually resident in this state, and not gone off from the same.—(m.)

**XLI.** Where the service of the original writ shall be, by leaving a copy at the defendant's residence, no execution shall issue until thirty days next after judgment obtained.—(n.)

**XLII.** No person (except transient persons) shall be held to bail for any sum less than thirty dollars, nor unless an affidavit

(b)—1st Faust, s. 36. (d)—1799 2d Faust, p. 320. (p)—1793, 1st Faust, p. 290. (g)—1769, P. L. p. 270. (h)—1747, P. L. p. 214. (m)—1720, P. L. p. 109.

shall be made before, and attested by, some judge, or other officer legally authorized to grant an order for bail, and endorsed on, or annexed to, the writ, before the service thereof, of the sum really due; nor for any other cause, without an order for bail, on probable cause of action shewn, to be endorsed on, or annexed to, the said writ, expressing the sum, for which bail shall be given.—(n.)

**XLIII.** If any person shall be arrested by virtue of any writ, or process, and the sheriff, or other officer, take bail from such person, the said sheriff, or other officer, shall, at the request, and cost, of the plaintiff, or his lawful attorney, assign to such plaintiff, the bail bond, or other security, by endorsing the same, and attesting it under his hand and seal, in the presence of two, or more, credible witnesses; and if the said bail bond, or other security, be forfeited, the plaintiff in such action, after assignment, may bring a suit thereon in his own name; and the court, where the action is brought, may, by rule, or rules, give such relief to the plaintiff and defendant, in the original action, and to the bail, upon the said bond, or other security, as is agreeable to justice and reason; and such rule or rules, shall have the effect of a *desazance*, to such bail bond, or other security for bail, (o); Provided nevertheless, that where any writ shall issue from any court in this state, whether of superior, or inferior jurisdiction, and the defendant shall give bail for his appearance, and make default, the suit shall be prosecuted to judgment and execution, against such defendant, before any proceedings shall be had, against the common bail; but if the sheriff shall return upon the execution, that the defendant is not to be found, or hath no effects, whereof to levy the debt and costs, then the plaintiff may sue forth a *scire facias* against the bail, to shew cause why the execution for the judgment, and costs, should not issue against such bail; and upon such *scire facias* being returned executed, and no cause shewn, (†) judgment shall be entered up against such bail, and execution go forth as against the original defendant: And if the sheriff shall return upon the said writ of *scire facias*, that the defendant, or defendants, are not to be found in his district, or that he resides in some other, an *alias* shall issue to the sheriff of the district, where such defendant resides, who shall execute and return the same to the court, from whence it issued; and if an *alias scire facias* shall issue upon the general return of *non est inventus*, and the like return shall be made a second time, the plaintiff shall have judgment and execution against the estate and effects of such bail, as if he had been personally served with such writ.—(a.)

(n)—1769, P. L. p. 273. (o)—1712, P. L. p. 96. † Words in Italics not in original. (a)—1785, P. L. p. 369. The bail becomes liable, upon the return.

**XLIV.** Appearance bail shall, in all cases, be entitled to all the rights, privileges, and powers, of special bail, and may surrender their principal in discharge of themselves, or the principal may surrender himself, in discharge of his bail, in the same manner, and to the same extent, as special bail may now do; and it shall not be necessary for any bail to obtain a judge's order for leave to surrender his principal.—(b.)

**XLV.** Where rules, or process to revive proceedings at law, cannot be served upon persons, because of their absence from this state, it shall be sufficient to post such rules or process upon the court-house door, of the district, in which such absent person had his, or her, last residence.—(c.)

**XLVI.** The clerk of any district court, or any justice of the quorum, in the district, wherein he shall reside, shall, on proper affidavits, to him, for that purpose, submitted, give an order for reasonable bail, in any action wherein bail may be proper, but not a matter of course, which shall be commenced in the court of such district; and shall also take a recognizance of special bail, in any cause, which shall be depending in such court, and certify and transmit the same to the judges, or clerk thereof.—(d.)

**XLVII.** The several sheriffs shall make certain return of all writs and executions, that shall be issued from any district court, on the respective days, by law appointed, to the clerk thereof; and it shall be the duty of the clerk, to deliver them safely to the plaintiffs' attorneys in the several suits so commenced, and prosecuted: And the plaintiff shall, on the return of such writ, proceed to file his declaration, during the sitting of the court, next after the writ is returnable, or at any time after, until the next succeeding court; and shall take judgment by default against the defendant, unless an appearance be regularly entered by the defendant's attorney, with the clerk of the court, during the first sitting thereof; but if the defendant enters an appearance, as aforesaid, he shall be at liberty to put in his plea, in writing, within one month after the filing of the declaration, or judgment may then also be taken against him by default.—(g.)

**XLVIII.** In actions brought on liquidated demands, where-in the defendant shall have suffered an order for judgment to be entered against him, it shall not be necessary for the plaintiff to prove his demand, or to execute a writ of enquiry, but the same shall, on motion to the court, be referred to the clerk, to ascer-

*non est inventus;* upon the ca. su. issued against the defendant; but will be permitted to surrender the principal, at any time during the whole of the first term, after the service of the writ, upon himself. 2 *Aber & McCord*, p. 136. *Davitt vs. Counsel*.

(b)—1809, Session Acts, p. 30. (c)—1792, 1st Faust, p. 213. (d)—1799, 2d Faust, p. 314. (g)—1791, 1st Faust, p. 40.

tain; the sum actually due, and judgment shall be entered accordingly; for which service the clerk shall be entitled to receive twenty-five cents: Provided, that nothing herein contained shall deprive the defendant of the right to set aside the order for judgment, and make such defence as is now allowed by the rules and practice of the court.—(h.)

**XLIX.** In all cases of summons and petition, on liquidated demands, in which no defence shall be made, it shall not be necessary for the plaintiff to prove his demand, but, on motion to the court, a decree shall be entered, as if the same had been proved.—(h.)

**L.** The absence of a witness, to a bond, or note, shall not be deemed a good cause for postponing a trial, respecting the same, but the signature to such bond, or note, may be proved by other testimony, unless the defendant, at the time of filing his plea, shall swear, (or affirm) that the signature to the bond, or note, in suit, is not his; nor in case the defendant should be executor, or administrator, shall the cause be postponed for want of the subscribing witness, but the signature may be proved by other testimony, unless such executor, or administrator, (or one of them, if there be more than one defendant) shall swear (or affirm) as aforesaid, at the time of filing his plea, that he has cause to believe that the signature to the bond, or note, in suit, is not the testator's, or intestate's, as the case may be: Provided always, that nothing herein contained, shall prevent the court from postponing such trial, if, in their opinion, a sufficient cause shall be assigned for such postponement.—(m.)

**LI.** The verdicts of juries, on all contracts, made after the first day of May, 1796, shall be expressed in dollars, dimes, cents, and mills.—(n.)

**LII.** All writs of inquiry, shall be executed at the same court where interlocutory judgments are obtained: Provided nevertheless, that executions shall be stayed thirty days next after the execution of such writs of inquiry.—(o.)

**LIII.** If any defendant shall be taken, or charged, in custody, upon any writ, or process, and detained in prison, for want of sureties for his appearance, the plaintiff, in such writ, shall, before the end of the term, next after such writ, or process, shall be returnable, declare against such prisoner, and cause a true copy therof to be delivered to such prisoner, or to the gaoler, or keeper of the prison, or gaoler in whose custody such prisoner shall be; to which declaration the said prisoner shall appear and plead; and upon default, the plaintiff shall have judgment in the same manner, as if such prisoner had appeared and refused to answer, or plead.—(a.)

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(h)—1809. Sess. Acts, p. 29. (m) 1802, 2d Faust, p. 453. (n)—1795,  
ibid, p. 15. (o)—1720, P. L. p. 109. (a)—1712, P. L. p. 89.

**LIV.** Every defendant in any suit, and every plaintiff in re-plevin, may, with leave of the court, plead as many several matters thereto, as he shall think necessary for his defence : but no dilatory plea shall be received in any court of record, without affidavit to prove the truth thereof, or probable matter shown to the court to induce them to believe that the fact of such dilatory plea is true.—(b.)

**LV.** If an action of debt shall be brought upon any single bill, or if an action of debt, or *scire facias*, shall be brought upon any judgment, where the defendant hath paid the money due upon such bill, or judgment, such payment may be pleaded in bar of such action or suit ; and if an action of debt be brought upon any bond, which hath a condition or defeazance to make void the same upon payment of a less sum at a day, or place, certain, if the obligor, his heirs, executors, or administrators, have, before the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the condition of such bond, though such payment were not made strictly, according to the condition, yet it may, nevertheless, be pleaded in bar of such action, and shall be as effectual a bar thereof, as if the money had been paid at the day and place in the said condition mentioned, and had been so pleaded.—(b.)

**LVI.** If at any time pending an action upon any bond with a penalty, all the principal money and interest due upon such bond, and also all such costs as have been expended in such suit in law, or equity, be brought into court, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of such bond, and the court shall give judgment to discharge the defendant from the same.—(b.)

**LVII.** In actions of detinue, the general issue shall be non detinet, and such actions may be prosecuted in the same manner, as actions of trover and conversion ; and no wager of law shall be allowed. —(q.)

**LVIII.** The method of trying the title to lands or tenements within this state, shall be by action of trespass, wherein the real names of the plaintiff and defendant shall be used ; and if the jury shall find for the plaintiff, they may, in the same verdict, award damages for the mesne profits ; and the judgment shall be entered on such verdict, as well for the damages, as the recovery of the land ; and the plaintiff shall thereupon be entitled to a writ of possession for the land, and an execution for his damages.—(d.)

**LIX.** In actions of trespass brought to try the title to land, the plaintiff, or his attorney, shall always endorse on the original and copy writs, that the action is brought to try the title, as well as for damages ; and the judges of the court of common

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(b)—1712, P. L. p. 95. (q)—1785, P. L. p. 384. (d)—1791, 1st Faust, p. 63

pleas shall form such rules, and lay the parties under such just and reasonable terms, as will bring them to trial upon the merits of the case, conformably to the principles of trial by ejectment.—(g.)

LX. In all actions of trespass to try the titles to lands, commenced within the time limited by law, the plaintiff shall proceed with all convenient expedition to the trial of the same; and in case a verdict and judgment shall pass against him in such action, or he suffer a nonsuit or discontinuance, or otherwise let fall the same, such verdict or judgment, nonsuit or discontinuance, or other letting fall of the said action, shall not be conclusive and definitive on the part of the plaintiff; but at any time within two years, the said plaintiff, or any other person claiming under him, shall have a right to commence his action for the recovery of the said lands *de novo*, and prosecute the same in the manner, and with the expedition, before directed; but in case a verdict and judgment again pass against such plaintiff, or he suffer a nonsuit or discontinuance, or otherwise let fall his said action a second time, then such second verdict and judgment, nonsuit or discontinuance, shall be finally conclusive on the part of every such plaintiff, and he shall be for ever barred and excluded from any further action or suit for the recovery of the same lands, and the right of the defendant shall thenceforth firmly settled and established against such plaintiff, his heirs, and assigns: Exempting persons out of the limits of this state, who shall be allowed four years, and females covert, who shall be allowed two years after discovery, and persons under the age of twenty one years, who shall be allowed two years after they come to full age, to prosecute their second actions in the manner above directed.—(h.)

LXI. In all actions commenced or prosecuted in any of the courts of this state, wherein the right or title to any lands or tenements shall come in question, the presiding judge, or judges, of the several courts, wherein the same may be depending, shall appoint surveyors, at the nomination of the parties, to survey the same, at the charge of the said parties, and to return such survey, on oath, at the next sitting of the said court; and in case either of the parties shall refuse to nominate a surveyor duly sworn and qualified, then the said court shall proceed to nominate two or more such surveyors, as they shall think fit, in order for the better finding out, and discovering, of the truth of the matter in difference: And if the court shall acquiesce in the return of the surveyors given in on oath, as aforesaid, the same shall be allowed as evidence: And in case any action shall be brought for a trespass, or waste, committed on the plaintiff's lands or tenements, the court shall have power to appoint one

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(g)- 1791, 1st Faust, p. 168. (h)—Ibid, p. 66.

or more, sufficient persons to view the said trespass, or waste, if need be, who shall return an account thereof, on oath, at the next court, and the true value of the damages occasioned by such trespass, or waste, and the same shall be allowed as evidence at the discretion of the court. (d) Fees for recording plats to be fixed by court at the time of trial, and before costs are taxed.—(a.)

LXII. In all actions of trespass to try titles to lands, in all actions of trespass on the case, in all actions of trover, and in all actions of detinue, brought to establish or try the right or title in any kind of property, if the plaintiff establishes his right of property therein, he shall recover and have his full costs of suit, whenever the verdict shall be for a sum above four dollars.—(m.)

LXIII. It shall not be necessary to petition any of the judges for a writ of attachment, or summons in dower, or partition, but the same shall be demandable of common right, and shall be issued in common form out of any district court in this state, having jurisdiction: Provided always, that no writ of attachment shall issue before the plaintiff shall have given bond to the defendant in double the amount, for which the attachment issues, to be taken by, and lodged with the clerk of the district, to be answerable for all damages, which the defendant may sustain from any illegal conduct in the obtaining of such attachment.—(n.)

LXIV. In all cases of copartnership debts, it shall be sufficient to serve process upon such of the copartners as may reside, or be found, in the state; or in cases, where there are dormant partners, upon such of the firm or copartnership, as are known; and suits so commenced against copartnerships shall be legal and valid.—(o.)

LXV. In all actions brought on bonds conditioned for performance of covenants, or for delivery of property, or for things other than the payment of money, the plaintiff shall, before he takes out execution, (and the defendant may, by rule of court, compel him thereto,) submit the condition of such bond, and the special circumstances to a jury, in like manner as on a writ of inquiry; which jury shall assess and fix the damages or debt actually due, and the execution shall be levied accordingly: Provided always, that the judgment for the penalty shall stand as a security for the sum so assessed by the jury, together with the costs of suit.—(b.)

LXVI. All persons willing to be admitted the guardians of negroes, Indians, mulattoes, or mestizos, claiming their freedom, shall file their petitions in the office of the clerk of the court of any of the districts; whereupon such clerk shall

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(d)—1722, P. L. p. 119. (a)—1795, 2d Faust, p. 34. (m)—1799, 2d Faust, p. 320. (n)—Ibid, p. 315. (o)—1792, 1st Faust, p. 214. (b)—Ibid, 213.

admit such petitioner to be the guardian of such negroes, Indians, mulattoes, or mustizos; and such guardian, so admitted, shall have power to bring, support, and maintain an action, or actions (o) of trespass, in the nature of ravishment of ward, against any person, who shall claim property in, or be in possession of, such negro, Indian, mulatto, or mustizo; and on such action brought, the defendant shall plead the general issue, and the special matter shall be given in evidence; and upon a special or general verdict found, judgment shall be given according to the right of the case, without regard to any defect in the proceedings, either in form, or substance; and if judgment shall be given for the plaintiff, a special entry shall be made, declaring that the ward of the plaintiff is free, and the jury shall assess the damages, which the plaintiff's ward hath sustained; whereupon, the court shall give judgment, and award execution against the defendant for such damages, with full costs of suit; but in case judgment shall be given for the defendant, the said court shall have authority to inflict such corporal punishment, not extending to life, or limb, on the ward of the plaintiff, as they shall think fit: Provided, that in any action to be brought, in pursuance of the foregoing directions, the burden of the proof shall lie on the plaintiff, and it shall be always presumed that every negro, Indian, mulatto, or mustizo, is a slave, unless the contrary be made appear; (Indians in amity excepted, in which case the burden of proof shall lie on the defendant); And provided also, that in all such actions, the defendant shall enter into a recognizance, with one, or more, sufficient sureties, to the plaintiff, in such sum as the court shall direct, with conditions that he shall produce the ward of the plaintiff, at all times, when required by the court, and that, pending such action, the ward of the plaintiff shall not be elogned, abjured, or misused.—(c.)

LXVII. In cases where there are two, or more, executors, or administrators, and any one, or more of them shall have withdrawn, or reside out of the state, it shall be lawful for any creditor, or person having cause of action against the estate, to sue out a writ against all the executors, or administrators, naming and setting forth therein, the executor, or administrator, (one or more) who is out of the state; and the said writ being executed in the usual form, upon those, who are within the state, the suit shall be deemed to be good and effectual, to all intents and purposes; saving only, that the judgment, in such cases, shall not work any devasavit upon the person so absent, or affect them in their private right.—(d.)

LXVIII. In all actions, where the plaintiffs shall die, after an interlocutory judgment, and before final judgment, such ac-

(o)—1799, 2d Faust, p. 324. (c)—1740, P. L. p. 164. (d)—1793, 1<sup>st</sup> Faust, p. 290.

Suits shall not abate, if the same might be originally maintained by the executors or administrators of such plaintiff; and if the defendant shall die after such Interlocutory judgment, and before final judgment, such action shall not abate, if the same were originally maintainable against the executors, or administrators, of such defendant; but the same may be continued by *scire facias*; and if such defendant, or his executors, or administrators, shall appear at the return of such writ, and not shew sufficient cause to arrest the final judgment; or, being returned warned, shall make default; or if, upon two writs of *scire facias*, it be returned, that the defendant, his executors, or administrators, had nothing, whereby to be summoned, or could not be found in the state, then a writ of enquiry of damages shall be awarded; which being executed, judgment final shall be given for the plaintiff, his executors, or administrators, prosecuting such writ, or writs, of *scire facias*, against such defendant, his executors, or administrators, respectively.—(h.)

LXIX. If there be two, or more, plaintiffs, or defendants, and one, or more, of them die, if the cause of action shall survive, to the surviving plaintiff, or plaintiffs, or against the surviving defendant, or defendants, the writ, or action, shall not be thereby abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving plaintiff, or plaintiffs, against the surviving defendant, or defendants.—(h.)

LXX. No judgment, after a verdict of twelve men, shall be stayed, or reserved, for any defect in the writ, original, or judicial, or for a variance from the writ in the declaration, or other proceedings; or for any mispleading, insufficient pleading, discontinuance, misjoining of the issue, or lack of a warrant of attorney, or because the name of the sheriff is not returned upon such original writ, or for not alledging any deed, letters testamentary, or of administration, to be brought into court, or for omission of the words, "with force and arms," or, "against the peace," or for mistake of the christian name, or sur-name of either party, sum of money, or other thing, day, month, or year, in the declaration, or pleading, (the name, day, or time, being right, in any part of the record, or proceedings,) or for the omission of the averment, "this he is ready to verify," or, "this he is ready to verify, by the record," or, for not alledging, "as appeareth by the record," or, for omitting the averment of any matter, without proving which, the jury ought to have given such a verdict, or for any informality in entering up the judgment; nor shall any judgment, entered upon confession, or by *nil dicit*, or *non sunt informati*, be reversed, nor a judgment, upon a writ of inquiry, executed.

—(h)—1746, P. L. p. 212.

be stayed or reversed, for any omission, or fault, imperfection, or thing, which would not have been a good cause to stay, or reverse, the judgment, in case a verdict of twelve men had been given in the said action, or suit.—(m.)

LXXI. Where a demurrer shall be joined in any action, the judges shall proceed to give judgment according to the very right of the cause, as the matter in law shall appear unto them, without regarding any imperfection, omission, or defect, in any writ, return, plaint, declaration, or other pleading, process, or cause of proceeding whatsoever, except those only, which the party demurring shall specially and particularly set down, and express, as causes of the same: Provided, sufficient matter appear in the said pleadings, upon which the court may give judgment, according to the very right of the cause.—(m.)

LXXII. All omissions, variations, defects, and other matters, of like nature, not being against the right of the matter in suit, nor whereby the issue or trial shall be altered, [and all misprisions of clerks (o) ] shall be amended by the justices, or judges, of the courts, where such judgments are given, or whereto the record shall be removed, by writ of error: Provided always, that nothing in this, or the two sections immediately preceding, shall extend to any indictment, or presentment, of felony, murder, or treason, or other criminal matter, nor to any process upon any of them, nor to any writ, bill, or action, upon any penal statute, nor to any writ of error, by an executor, or administrator.—(m.)

LXXIII. Every execution shall be issued from the court of the district in which judgment shall have been obtained, and shall be tested in the name of the senior associate judge, signed by the clerk, and sealed with the seal of such court; and shall be served by the sheriff of the district, or his deputy, wherein the defendant, or his property, may be found.—(n.)

LXXIV. It shall be the duty of every sheriff to make return of the executions lodged in his office, on oath, within ten days after the return day, with a full and particular account of the levies, or sales, by him made, and of the money in his hands.—(p.)

LXXV. If any sheriff, or coroner, shall refuse or neglect to return any execution, that may be lodged in his office, with due returns thereon, as the law directs, such sheriff, or coroner, shall, for every such execution, not returned, as aforesaid, forfeit and pay a sum not less than forty, nor more than two hundred, dollars, to any person, who will sue for the same, and shall not thereby be exonerated from such other pains and penalties, as, by law, they are subject to: Provided, nothing herein con-

(m)—1712, P. L. p. 79 and 94. See also p. 139. (o)—1712, P. L. p. 39,

(n)—1799, 2d Faust, p. 314. (p)—1791, 1st Faust, p. 62.

Mined, shall be construed, to compel any sheriff, or coroner, to return any execution lodged in his office, expressly to bind property, and so marked by the person lodging the same.—(b.)

LXXVI. At whatsoever stage any suit may cease, or determine, the attorneys, clerks, and sheriffs, shall have their fees taxed; and, on non-payment thereof, execution may be issued, against the party, from whom they are due, and lodged with the sheriffs of the respective districts, returnable at the ensuing return day: And the sheriff, for his trouble, in collecting such fees, shall be allowed a commission of two and a half per cent, to be paid by the defaulter.—(c.)

LXXVII. The party, at whose suit any person shall be in execution, for any debt, or damages, received, his, or her, executors, or administrators, may, after the death of such person, be charged, and dying in execution, lawfully sue forth, and have, a new execution against the lands and tenements, goods, and chattels, of such deceased debtor, in such manner, and form, as he, or she, might have had, if such person, so deceased, had never been charged in execution: Provided, that no new execution shall be had, or taken, against any lands, tenements, or hereditaments, of the party so dying, in execution, which shall, at any time after the judgment, or judgments, be by him sold, *bona fide*, for the payment of any of his creditors, and the money arising from such sale be paid, or secured to be paid, to any of his creditors, with their privity, and consent, in discharge of their, or any of their, due debts, or of some part thereof.—(d.)

LXXVIII. The judges of the court of common pleas, shall have authority, from time to time, to direct and alter the places where the sheriffs of the several districts shall make sale of the property ordered to be sold, by any process of law, or order of court, as they shall judge necessary and convenient, for the purpose of effecting the intention of the legislature, with respect to public sales: And all sales of mortgaged property, shall be made in the several districts, at the places fixed by the judges, and at the times fixed by law, for the sale of property under execution.—(e.)

LXXIX. On judgment being obtained, in the court of common pleas, on any bond, note, or debt, secured by a mortgage, of real estate, it shall be lawful for the judges of the said court, in case of any judgment having been obtained, subsequent to the property's being mortgaged, and prior to the obtaining of judgment in the action hereby allowed to be commenced, to order the sale of the mortgaged property, for the satisfaction of the debt secured by such mortgage; and to give a reasonable ex-

(b)—1799, 2d Faust, p. 319. (c)—1791, 1st Faust, p. 42. (d)—1712, P., L. p. 75. (e)—1791, P. L. p. 168.

tension of the time when the sale shall take place, not exceeding the term of six months, from the judgment; and also, to give a reasonable credit on the sale of the mortgaged premises, not exceeding the term of twelve months from the sale: And the mortgagor shall be forever barred, and foreclosed by such sale, from his equity of redemption, in as complete a manner, as if the same had been foreclosed in a court of chancery: Provided always, that if, at any time before the sale, the mortgagor shall tender to, or pay into the hands of, the plaintiff, or his agent, or attorney, or to the sheriff, all the principal money and interest, meant to be secured by such mortgage, and also, all the costs of suit, the sale shall not take place, but the mortgagee shall enter satisfaction on the mortgage, and the mortgaged premises shall be forever exempt therefrom.—(h.)

LXXX. The judges of the courts of common pleas and sessions, may, from time to time, make such just and reasonable rules and orders for the more regular and effectual dispatch of business therein, as to them shall seem necessary and proper.—(m.)

LXXXI. The judges of the court of common pleas, in their respective districts, shall have full power to hear and determine all causes in the court of caveats.—(n.)

LXXXII. All the power and authority appertaining to, and exercised by, the court of equity, as to the appointment of guardians of the estates and persons of minors, shall be vested in the judges of the court of common pleas, so far as the rights of minors may be concerned in the division of any real, or personal property, as well as all other acts, relative to the partition of estates.—(a.)

LXXXIII. In all cases of idiocy, or lunacy, the said judges shall have jurisdiction, concurrent with that exercised by the judges of the court of equity, according to the usage and practice of the said court in such cases.—(b.)

LXXXIV. The judge, or judges, presiding in the court of common pleas, in any district in this state, shall receive, hear, and determine, in the same court, all appeals whatsoever, which shall, from time to time, be made thereto, from any judgment, sentence, decree, determination, denial, or order, of any court of ordinary, of such district; and in such cases of appeal, all matters of fact shall be tried by a jury, (o): but no appeal, nor any writ of error, or supersedeas, shall be granted, until a final decision of the action, or controversy, shall have been made in the inferior court.—(c.)

LXXXV. If two, or more, judges of the court of common pleas and sessions, shall attend at any district court, directed to

(b)—1791, 1st Faust, p. 64. (m) Ibid, p. 39. (n)—1791, 1st Faust, p. 166.  
 (a)—1806, Sess. Acts, p. 47. (b)—Ibid, p. 48. (o)—1799, 2d Faust, p. 316.  
 (c)—1785, P. L. p. 372.

## JUDICATURE.

be holden in this state, it shall be lawful for them, severally, to hold, at the same time, a court of general sessions of the peace, assize and terminer, and general gaol delivery, and a court of common pleas, distinct from each other; and also, to hold, distinct from each other, a court of common pleas for the execution of writs of inquiry, and for the hearing and determining of causes within the summary jurisdiction of the said court.—(d.)

LXXXVI. The judges of the court of general sessions and common pleas, shall have power, at their chambers, to grant writs of prohibition and mandamus, and of quo warranto, and to hear and determine motions, to set aside, or stay, executions, in the same manner, in every respect, as if the court was actually sitting: And the parties, respectively, shall have the same right of appeal to the constitutional court of appeals, as if the decision were made in open court.—(e.)

LXXXVII. If the day appointed by law for the holding and sitting of either of the district courts of this state, shall happen to be Sunday, such court shall be holden, and sit, on the day following.—(g.)

LXXXVIII. If one, or more, of the associate judges shall not attenue and hold each of the district courts of this state, on the day prescribed by law, the clerk thereof, or his deputy, shall open and adjourn the same from day to day, until one, or more, of the said judges shall attend, or until the last day appointed for the holding thereof; when the clerk, or in his absence, his deputy, or, in case of the absence of both, the sheriff, or his deputy, shall adjourn the same unto the next court; to which time all actions depending in the said court shall be continued.—(g.)

LXXXIX. It shall be lawful for the associate judges of the court of sessions and common pleas, and they are hereby required, whenever they may deem it necessary, to order a special court of sessions and common pleas, to be holden in any district, for the purpose of hearing and determining all such causes, rules, and motions, either civil, or criminal, as may be ready for trial, in the said court; and the clerk of the constitutional court, shall, forthwith, send to the clerk of the court of common pleas and sessions of the said district, a certified copy of the said order; and shall cause the same to be published in such newspaper, or newspapers, of the state, as the said judges may direct. And it shall be the duty of one of the said judges to hold the said court.

XC. Wherever any clerk of the court of common pleas and sessions, shall receive such notified order, it shall be his duty, forthwith, to issue, and deliver to the sheriff of the same district,

(d)—1799, 2d Faust, p. 317. (e)—1818, Sess. Acts, p. 13. (g)—1799, 2d Faust, p. 266.

## JUDICATURE.

a writ of venire, for the common plea and grand juries, drawn at the next preceding court of the district, returnable to the said special court; and it shall be the duty of the sheriff of the said district, to execute the said writ, and the jurors therby summoned, shall be liable to the same penalties for non-attendance at the said special court, as for like default, in the court of common pleas and sessions.

XCI. The judge, who shall hold such special court, shall cause a jury to be drawn, in the manner prescribed by law, for the next ensuing court of common pleas and sessions for the same district, and to award a writ of venire for summoning the same.

XCII. All causes which may be depending, continued, or have day, in any court of common pleas and sessions of any district, wherein a special court shall be ordered, shall be continued in, and have day, in the said special court; And the parties thereto shall be required to attend, and prosecute, or defend the same, in the same manner as they would be required to attend, and prosecute, or defend, the same at the court, to which the said causes were originally returnable; and all witnesses who may be duly summoned, or bound, in recognizance, to attend at any of the above mentioned courts, shall be liable, on their failure so to do, to the same penalties, as for non-attendance at any of the regular sessions of said court.—(a.)

XCIII. It shall be lawful for any of the judges of the court of common pleas, or general sessions, to appoint, in open court, while sitting in any of the districts of this state, persons to serve in the office of constables for such district, in such number as they shall, from time to time, think fit and in case any person so appointed, shall refuse, or neglect, to act, he shall, upon due conviction, before the said court, forfeit the sum of eight dollars and fifty cents, one half to the use of the state, and the other half to any person who will sue for the same; but no constable shall be compelled to attend at any court of general sessions more than once in a year.—(b.)

XCIV. In case any person shall commit any misbehavior, or contempt, in any court of judicature, in this state, by word, or gesture, it shall be lawful for such court to set a fine on the offender, in any sum, not exceeding eight dollars and fifty cents, for the use of the state, and may commit such offender, 'till payment thereof, together with the usual fees of commitment; but if any person shall, in the face, and during the sitting, of such court, strike, or use any violence therein, such offender shall be fined at the discretion of the court, and be committed, 'till payment, (m): Provided, that no citizen of this state, shall be sent to gaol for any contempt of court, or supposed, case

(a)—1817, Sec. Acts, p. 67. (b)—P. L. p. 129, 168, 181 and 291. (m)—1734, P. L. p. 159.

Contempt of court, committed during the sitting of the court, or, in disturbance of the court, until he be brought before the court, and then be heard, by himself, or counsel, or shall stand mute; And when any affray shall happen during the sitting of any court in this state, and within the hearing, or to the disturbances of the court, the court shall order the sheriff, or other lawful officer, to take the affrayers, or other disturbers of the peace, or those guilty of contempt, and bring the offender, or offenders, before the court; and the court shall make such order, or orders, thereon, as may be consistent with law, justice, and good order.—(q.)

**XCV.** Where any person shall be feloniously stricken, wounded, poisoned, or otherwise injured, in one district, and die thereof in another, any inquisition, or indictment thereon, found by jurors of the district, where the death may happen, whether it be found before the coroner, upon a view of such dead body, or before the justices of the peace, or commissioners lawfully authorized, to inquire of such offence, shall be as good and effectual, in law, as if the stroke, wound, poisoning, or other injury had been committed in the same district where the party shall die; and the person, or persons, guilty of such offence, and every accessory thereto, either before, or after, the fact, shall be tried, try, and before the same court; and if convicted, punished in the same manner, as if the deceased had suffered such striking, wounding, poisoning, or other injury, in the same district, where he, or she, thereof died.—(n.)

**XCVI.** Every person accused and indicted of high treason, petit treason, murder, felony, or other capital offence, shall have a true copy of the whole indictment, but not the names of the witnesses, delivered to him, or her, three days at least, before he, or she, shall be tried for the same, whereby to enable them to advise with counsel thereupon, his, or her attorney, or attorneys, agents, or any of them requiring the same, and paying the officer his usual fees, for every copy of such indictment; and every person so accused and indicted, arraigned, or tried, for any such treason, murder, felony, or other capital offence, shall be permitted to make his, or her, defence, by counsel, learned in the law, and to make any proof, that can be produced, by lawful witnesses, who shall then be upon oath, for his, or her, just defence, in that behalf; and in case any person so accused, and indicted, shall desire counsel, the court before whom such person shall be tried, or some judge of that court, shall, immediately upon such request, assign to such person, such, and so many counsel, not exceeding two, as the person shall desire; to whom such counsel shall have free access at all reasonable times, either before, at, or after, trial.—(n.)

(q)—1811, Gen. Acts, p. 22-3. (n)—1793, 1st Part, p. 293. (o)—1793,  
P<sub>2</sub> p. 139.

**XCVII.** If any person committed for high treason, or felony, plainly, and specially expressed, in the warrant of commitment, upon his prayer, or petition, in open court, the first day of the term, to be brought to his trial, shall not be indicted some time in the next term, after such commitment, it shall be lawful for the judges of the said court, and they are hereby required, upon motion to them made, in open court, on the last day of the term, either by the prisoner, or any one in his behalf, to set at liberty, the said prisoner, upon bail, unless it appear to the judge, or judges, upon oath made, that the witnesses for the state could not be produced for the same term; and if any person committed, as aforesaid, upon his prayer, or petition, in open court, the first day of the term, to be brought to his trial, shall not be indicted and tried, at the second term, after his commitment, or upon his trial, shall be acquitted, he shall be discharged from his imprisonment.—(a.)

**XCVIII.** Every person accused, indicted, or tried, for treason, murder, felony, or other capital offence, shall have the like process of the court, to compel his, or her, witnesses to appear and give evidence, at such trial, as is usually granted, to compel witnesses to appear against them; (a) and their witnesses shall be sworn to depose in the same manner, as witnesses for the prosecution.—(b.)

**XCIX.** If any principal offender shall be convicted of any felony, or shall stand mute, or challenge, peremptorily, above the number of twenty persons, returned to serve on the jury, it shall be lawful to proceed against any accessory, either before, or after, the fact, in the same manner, as if such principal felon had suffered the punishment inflicted by law, notwithstanding such principal felon shall be admitted to the benefit of clergy, pardoned, or otherwise delivered, before execution.—(c.)

**C.** When any prisoner shall be discharged by reason of the non-attendance of the prosecutor, or on account of a bill presented against him, being rejected by the grand jury, or by reason of an acquittal by a petit jury, such prisoner shall not be bound to pay any charges incurred in his apprehension, detention or prosecution; but the same shall be paid out of the fines and forfeitures received by the proper officers of the courts.—(d.)

**CI.** In all manner of trials and inquests, whether civil, or criminal, in which any of the subjects of foreign nations, in alliance, or neutrality, with the United States, may be parties, in any court of record in this state, one half of the jury shall be aliens, if so many aliens, or foreigners, can be found in the place, where such trial shall be had, and the other half of such jury shall be citizens, drawn agreeably to the jury law, subject to the

(a)—1712, P. L. p. 23. (a)—1731, P. L. p. 130. (b)—*Ibid.*, p. 92.

(c)—1712, P. L. p. 92. (d)—1791, 1st Faust, p. 45.

challenge, or exception, of the alien party: And the judges, or any one of them, shall be authorized, after drawing the jurors for any of the said courts, to issue a *venire de mediata lingue* to the sheriff, who shall summon eighteen subjects of the nation of such alien, if they can be had, or the subjects of any other nation in amity with the United States, to appear and serve as jurors on the trial of any such cause; and on refusal or neglect to appear and serve, they shall be liable to the same penalty, to which a citizen is subject, in case of a like refusal or neglect. And of the foreigners so summoned, and appearing, six shall be drawn by lot, by a child under ten years of age, as directed by the jury law; which six foreigners, together with the six citizens, shall form a jury to sit on such trial: And in case a sufficient number of such aliens shall not appear, or they are excepted to after appearing, the court may award a *tales de circumstantibus* for as many as shall be wanting.—(g.)

CIII. All challenges and exceptions to jurors allowed by the laws of England, except the challenge to the array in respect of partiality, or affinity, of the sheriff, shall be admitted in this state.—(h.)

CHI. No person arraigned for petit treason, murder, or felony, shall be permitted to challenge, peremptorily, above the number of twenty jurors.—(m.)

CIV. In all cases, where a juror, after appearance, shall refuse to act, or shall absent himself without leave of the court, or after being sworn to the trial of any issue, shall die, be taken so ill, as to be unable to try such issue, or be withdrawn by leave of the court and with the consent of the parties before a verdict found, the court shall have power to order other jurors to be drawn in order to proceed in the trial of such cause, and of other causes then depending, in the same manner as is directed by law to supply defects of jurors, when a sufficient number of those who are warned in the panel annexed to the *venire facias* do not appear.—(n.)

CV. Every person indicted of petit treason, wilful burning of houses, murder, robbery, burglary, or other felony, and thereupon arraigned, who shall stand mute of malice, or froward mind, or challenge, peremptorily, above the number of twenty jurors; or will not, or does not answer directly to the indictment and felony whereupon he is so arraigned, shall lose the benefit of clergy in like manner, as if he had directly pleaded to the indictment, *not guilty*, and had been found guilty according to the laws of the land.—(a.)

CVI. In all cases, where any person shall be found guilty of treason, murder, manslaughter, rape, or other felony, for which

(g)—1723, P. L. p. 319. (h)—1731, Ibid, p. 126. (m)—1712, Ibid, p. 462  
(n)—1741, P. L. p. 223. (a)—1712, P. L. p. 49.

judgment of death should ensue, and shall be remanded to prison without judgment at that time given against him, the judge or judges presiding at the next court of sessions for the district, where the party so found guilty shall remain in custody, shall have power to give judgment against such convicted offender, in the same manner, as the judge or judges presiding at his trial might have done.—(b.)

CVII. Under favorable circumstances, the judges of the said courts shall have power to respite execution until thirty days after the time fixed by the sentence for that purpose.—(c.)

CVIII. No writ of *habeas corpus* or *certiorari* shall be granted to remove any prisoner out of any gaol, or to remove any recognizance, unless such writ shall be signed with the proper hand of one of the associate justices of the court, out of which the same shall be awarded, upon pain of forfeiting to the state, for every such offence, the sum of twenty-one dollars and forty cents.—(d.)

CIX. In all recognizances for keeping the peace, or good behaviour, or for appearing as party, surety, or witness, at any court of criminal jurisdiction in this state, the sum of money in which any person shall be bound, shall be made payable to the state in aid of the revenue thereof, and every such recognizance shall be good and effectual, provided it be signed by every party thereto, and acknowledged in the presence of a judge or justice of the peace, who shall certify such acknowledgment: And whenever any such recognizance shall become forfeited, a *scire facias* shall be issued without delay to summon every party bound thereby to appear at the next court of sessions, to shew cause why judgment should not be confirmed against him; and if any person so bound fail to appear, or appearing shall not give such reasons for not performing the condition of such recognizance, as the court shall deem sufficient, the judgment thereon shall be confirmed: And in every case, where such recognizance shall be adjudged to be forfeited, or where any fine shall be imposed by, or recovered for, the use of the state, in any district court, or before a justice, if the party incurring such forfeiture or fine shall fail to pay down the same, with the costs of prosecution, then a writ of *fieri facias* shall issue, by virtue of which the sheriff or his deputy shall sell, in the same manner as property is sold under execution in civil cases, so much of the offender's estate, real or personal, as may be necessary to satisfy such fine or forfeiture, the costs of prosecution, and the reasonable charges of taking, keeping, and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, and costs and charges, if he desire it: But the sheriff shall sell every other part of the personal estate, before

(b)—1712, P. L. Appx. p. 11. (c)—1769, P. L. p. 270. (d)—1712, P. L. p. 95.

he shall sell any negro : And if the sheriff, or his deputy, return on oath, that such offender refuseth to pay, or hath not any property, or not sufficient whereon to levy, then a writ of *capias ad satisficiendum* shall issue, whereby he shall be committed to the common gaol until the forfeiture, costs and charges shall be satisfied ; entitled nevertheless, to the privilege of insolvent debtors : Provided that, if any person shall forfeit a recognizance from ignorance, or unavoidable impediment, and not from wilful default, the court of sessions may, on affidavit stating the excuse, & cause thereof, remit the whole, or any part thereof, as may be deemed reasonable.—(g.)

CX. If any felon, or felons, do rob, or take away any money, goods, or chattels, from any person within this state, either from the person, or otherwise, and thereof be convicted, and found guilty, by reason of evidence given by the party robbed, or owner of such money, goods, or chattels, or by any other by their procurement, then such money, goods, or chattels, shall be restored to the party so robbed, or owner thereof : and the justices of jail delivery shall have power, to award, from time to time, writs of restitution accordingly.—(a.)

CXI. The solicitors appointed for the several circuits shall respectively, do the duty of state's attorney, and shall also give counsel and advice to the governor and other state officers, in matters of public concern, whenever required so to do, and assist the attorney-general in Charleston, or each other at any other place, in all suits and prosecutions in behalf of the state, whenever either of them may be directed to do so by the governor or commander in chief : and the said solicitors shall also attend the legislature whenever they shall meet, and draw out, or draft and engross, all such bills and acts as the president of the senate, or speaker of the house of representatives, shall, from time to time, direct them to prepare or engross. The said circuit solicitors shall be liable to all the penalties, and enjoy all the privileges, emoluments and advantages, to which the attorney-general of this state is liable, or entitled ; and shall be subject to be called upon by the attorney-general, to give their assistance and support in behalf of the state, in any case, where he may think it proper to require any or either of them so to do ; or whenever sickness may prevent him from doing his duty : Provided, nevertheless, that either of the said solicitors shall be at liberty to defend any person brought to trial before any criminal court of this state, when his duty shall not require him to prosecute such person, or when his assistance or service shall not be required against such person by the governor or attorney-general, as aforesaid.—(h.)

(g)—1787, P. L. p. 420. (a)—1712, P. L. p. 46. (h)—1791, 1st Faust, p. 65—See also 2d Faust, p. 544.

**CXII.** In all cases, wherein the rights of the state may be involved, it shall be the duty of the persons claiming under the state, to call on the attorney-general, or solicitors, in their respective districts, to defend the right of the state; on failure whereof, the record of such case shall not be adduced as evidence to constitute any claim against the state.—(m.)

**CXIII.** All the associate judges of this state, shall meet at Columbia, on the Tuesday next after the conclusion of the circuits, in every year, for the purpose of determining all motions, which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them; but no such court shall be held, in any of the cases aforesaid, by less than four of the said judges: And from Columbia, they shall proceed to Charleston, for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and all such points of law, as may be submitted to them.—(n.)

**CXIV.** In all cases of appeal from the decisions of the circuit courts of law, within this state, the opinion of the judge, who tried the cause, shall be taken, and have equal effect with that of any other member of the constitutional court: Provided nevertheless, the court shall not consist of less than five judges.—(o.)

**CXV.** Whenever, on any appeal from the decision of any circuit court of law, or equity, the final decision shall be against the appellant, or he shall withdraw his appeal, interest on the amount recovered shall be allowed at the rate of seven per cent. from the time the verdict, or decree, was given, to the time when such appeal shall be dismissed, or withdrawn: And the amount of such interest shall be endorsed on the back of the execution, and collected by the sheriff, with the original debt.—(p.)

**CXVI.** The constitutional courts of appeals at Charleston and Columbia, shall not consist of less than four judges; and no case shall be decided without the concurrence of three, at least, of the judges of the courts of common pleas and general sessions: And in case of an equal division of the judges, upon any question of appeal, the motion of the appellant shall not be lost, but the case shall be postponed until the attendance of any judge qualified to give an opinion, who may be absent at the trial, or argue a t of appeal.—(p.)

**CXVII.** It shall not be necessary for the judges of the appeal courts, either of law, or equity, to give separate opinions in cases decided by them, except where they shall think proper

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(m)—1808 Sess. Acts, p. 49. (n)—1799. 2d Faust, p. 317. 1817, Extra Sess. Ac. s. 4, and Sess. Ac. s. p. 70. (o)—1813, Sess. Acts, p. 44. (p)—1817, Sess. Acts, p. 70.

to do so; but the opinion of every such court shall be written by one of the judges thereof, and read at the time the decision shall be made, and signed by all the judges, who concur therein; and then be deposited with the clerk, or register, together with such a report of the case, from the circuit judge, who tried the same, as shall be necessary to give information of the points decided.—(a.)

CXVII. Every judge shall, when required, sign and seal a book of exceptions.—(b.)

CXIX. The judges of the courts of law, shall appoint a clerk, whose duty it shall be to attend at every meeting and sitting of the said judges, at Columbia, after the conclusion of the circuits, and keep the records of the courts, to be holden by the said judges, and to perform the usual official duties; for which he shall be allowed the sum of one hundred and forty dollars per annum.—(c.)

CXX. Proper and fit books shall be provided by the clerks of the courts, directed by the constitution to be holden at Columbia and at Charleston, whose duty it shall be, respectively, to record therein, the opinions of the judges; which opinions shall be duly filed and kept together, by the said clerks, respectively, in their said offices, that they may be forthcoming and subject to the further disposal of the general assembly of this state: And for the recording thereof, as aforesaid, each of the said clerks shall be allowed and paid, by the state, the same recording fees as the clerks of the district courts are entitled to, for the recording of judicial proceedings in their respective offices. The citizens of this state shall have access to the said books, as fully, as to other books of record, in any of the public offices in this state: And fit and proper indexes to the said books shall be correctly kept by the said clerks, in their respective offices. The said books shall be furnished to the said clerks, at the expense of the state, and be continued in the said offices, respectively, by them, as the property of the state: And it shall be the duty of the said clerks, respectively, whenever required, to furnish exact copies thereof, or of any part thereof, to such person, or persons, as may have occasion to demand the same: And the said clerks, respectively, shall be entitled to demand and receive of, and from, such person, or persons, for such transcript, the same fees as the clerks of the district courts are entitled to for exemplifications of their judicial records.—(d.)

CXXI. It shall be the duty of the sheriff of Richland district, to attend at every sitting of the said judges, after the conclusion of the said circuits, to perform such official services as shall be required of him, and he shall be allowed therefor, annually, the sum of one hundred and forty dollars.—(e.)

(a)—1816, Sess. Acts, p. 18. (b)—2d Faust, p. 317. (c)—1799, 2d Faust, p. 326. — see also 1st Faust, p. 167. (d)—1811, Sess. Acts, p. 49. (e)—1799, 2d Faust, p. 326.

**CXXII.** The state shall be divided into five equity circuits, to be constituted as follows, to-wit: The first circuit to begin at Edgefield court-house, for Edgefield equity district, on the first Monday in February and June, in every year; at Abbeville court-house, for Abbeville equity district, on the second Monday in February and June, in each and every year; at Pendleton court-house, for Pendleton equity district, on the Friday after the second Monday in February and June, in every year; at Greenville court-house, for Greenville district, on the third Monday in February and June, in every year; at Laurens court-house, for Laurens equity district, on the Thursday after the third Monday in February and June, in every year; at Newberry court-house, for Newberry equity district, on the fourth Monday in February and June, in every year. The second circuit to begin at Georgetown, for Georgetown equity district, on the first Monday in February and June, in every year; at Darlington court-house, for the present Cheraw equity district, on the second Monday in February and June, in every year; at Sumter court-house, for Sumter equity district, on the third Monday in February and June, in every year; at Kershaw court-house, for Camden equity district, on the fourth Monday in February and June, in every year. The third equity circuit to begin at Jacksonborough, until the court-house at Walterborough shall be completed, for Colleton equity district, on the third Monday in January and May, in every year; at Coosawhatchie, for Beaufort equity district, on the fourth Monday in January and May, in every year; at Barnwell court-house, for Barnwell equity district, on the first Monday after the fourth Monday in January and May, in every year; and at Orangeburg, for Orangeburg equity district, on the second Monday after the fourth Monday in January and May, in every year; each of which courts, shall sit six days, unless the business thereof be sooner disposed of. The fourth equity circuit to begin at Spartanburg court-house, for Spartanburg equity district, on the first Monday in February and June, in every year; at Union court house, for Union equity district, on the Thursday after the first Monday in February and June, in every year; at York court-house, for York equity district, on the second Monday in February and June, in every year; at Chester court-house, for Chester equity district, on the Thursday after the second Monday in February and June, in every year; at Fairfield court-house, for Fairfield equity district, on the third Monday in February and June, in every year; and for Columbia equity district, at Columbia, on the fourth Monday in February and June, in each and every year. The fifth equity circuit to begin at Charleston, for Charleston equity circuit and district, on the first Monday in November, and on the third Monday in February, in each and every year; the last mentioned

court to sit for four weeks at the sitting commencing in November, and four weeks at the sitting commencing in February, unless the presiding judge should be required, at an earlier period, to attend the court of appeals in equity, at Columbia.—(a.)

CXXIII. One of the judges of the court of equity shall attend at the said times and places, hold courts of equity for the said districts, and finish the business of each district, respectively, if the time allowed be sufficient for the completion of the same: And it shall be the duty of the said judges, to observe a regular rotation in holding the courts on the several circuits in the state, so that no one of the said judges shall hold the courts on any circuit twice in succession, or out of the regular order, unless some unavoidable casualty shall render departure from the regular order absolutely necessary: (a) And the orders and decrees of the said judges, in all causes, wherein appeals shall not be made, shall have the same effect with decrees sanctioned by the court of appeals.—(b.)

CXXIV. The judges of the appeal court in equity shall be authorized, and it shall be their duty, whenever they may deem it necessary, to order a special court of equity, to be held in any equity district, for the purpose of hearing and determining all such causes, rules, and motions, as may be ready for trial in said court; and the said judges shall cause due notice of the times of the meeting of such extra courts, by having the same published in such newspaper, or newspapers, of the state, as they may think proper: And all causes which may be depending, continued, or have day, in any court of equity, of any district, wherein a special court shall, or may, be ordered, shall be continued to, and have day, in the said special court: And the parties thereto, shall be required to attend, and prosecute, or defend, the same, in the same manner, as they would be required to attend, and prosecute, or defend, the same, at the court, to which the said causes were originally returnable; and all witnesses, who may be duly summoned, or bound in recognizance, to attend at any of the abovementioned courts, shall be liable, on their failure so to do, to the same penalties, as for non-attendance at any of the regular sessions of said courts.—(c.)

CXXV. The sheriffs of the districts, within the respective limits of which the said courts shall be held, shall execute, or cause to be executed, all process from the court of equity, in the several districts belonging to its jurisdiction; and shall, personally, or by deputy, attend the said court during the time of its sitting.—(d.)

CXXVI. No suit in equity shall be sustained in any case where plain and adequate remedy can be had at common law.—(e.)

(a)—1819, Sess. Acts, p. 20. (b)—1808, Sess. Acts, p. 30. (c)—1817, Sess. Acts, p. 68. (d)—1799, 2d Faust, p. 311, and Sess. Acts, of 1819, p. 21. (e)—1791, 1st Faust, p. 24.

CXXVII. All suitors and defendants in the said court, shall be at liberty to do their own business, without application to any counsellor, or solicitor, of the court.—(a.)

CXXVIII. All causes of equitable cognizance arising within any of the districts of this state, shall be tried and determined in the respective jurisdictions, or equity districts, herein before described; and commissioners in equity and registers, shall be appointed for the several districts, whose business it shall be to attend the sitting of every court in their respective districts, to file and keep all bills and answers, and papers whatsoever, relating to any cause depending therein, and take down and enter the decrees, orders, and minutes thereof, to make up and return a report upon all matters referred to them, in the said courts respectively, to swear and examine all witnesses, where necessary, or ordered by the court, upon interrogatories and cross interrogatories, who may be brought before any of them, touching any matter depending, or to be commenced, in any of the said districts, respectively, to swear defendants to answers, take recognizances and affidavits, and to do and perform all other matters and things, which are usually done, either by the master, or register of the said court, previous to the hearing of any cause: And the said commissioners shall also make all sales, under decrees of the said court.—(m.)

CXIX. The said registers and commissioners shall be elected, by joint ballot of both branches of the legislature, for the term of four years, and until another shall be elected; and a majority of all the votes given on such joint ballot shall be necessary to constitute an election.—(o.)

CXXX. Each register and commissioner in equity, shall, before he enters upon the duties of his office, execute a bond to the state of South Carolina, in the penal sum of twenty thousand dollars, for the faithful performance of the duties of his office; which bonds shall be taken in the several districts throughout this state, by the commissioners appointed to take bonds and securities from the sheriffs of the said districts respectively, and transmitted by the said commissioners, to the comptroller general, to be by him deposited in the treasurer's office, of the upper division, when they relate to the upper division; and in the treasurer's office, in Charleston, when they relate to the lower division (p.). And the said bonds shall be liable to be sued by any person who may be aggrieved by the misfeasance, or default of the said registers, and masters, or commissioners, respectively.—(p.)

(a)—1791, 1st Faust, p. 34. (m)—1791, 1st Faust, p. 31-2. (o)—1812, Sess. Acts, p. 35-6. Commissioners appointed for Charleston district, and vested with equal authority, &c. w. b. master: Sess. Acts, 1813.

(p)—1791, 1st Faust, p. 31. Penalty of commissioners' bonds reduced to \$10,000, except for the districts of Georgetown, Charleston, and Beaufort: 1812, Sess. Acts, p. 53.

CXXXI. The said court of equity shall sit at the respective times and places by law prescribed, from day to day, Sundays excepted, until all the causes, which shall be brought before them, shall be heard: Provided, the whole time of their sitting shall not exceed six days at each place; but, at Charleston, 'till all the business ready for the said court shall be heard.—(a.)

CXXXII. Where there are several defendants residing in different districts, ranged under different courts, the complainant shall commence and prosecute his proceedings in that court which takes cognizance over the districts in which the greatest number of defendants may reside; but where an equal number of defendants reside in districts ranged under different courts, the complainant may elect in which of such courts he will commence his proceedings: And the judges of the said court shall make all necessary rules for effecting the object of this section.—(b.)

CXXXIII. All writs and process issuing out of the said courts of equity (except such writs as may be by law excepted) shall be signed by the register of the same court, and shall be granted, of course, to any person who may apply for the same; such person paying the fees allowed by law, for such writ or process (c): But no subpoena, or other process, for appearance, shall issue out of any of the said courts, 'till after bill filed with the proper officer of the court, except in cases where it shall be otherwise directed by law.—(d.)

CXXXIV. The several registers, and commissioners in equity, shall keep their respective offices open from nine o'clock in the morning, 'till three o'clock in the afternoon, every day throughout the year, Sundays, Christmas day, and the anniversary of American independence, excepted.—(e.)

CXXXV. The said court of equity shall be considered as always open for administering justice to suitors.—(f.)

CXXXVI. It shall be lawful for any judge in equity, at chambers, to hear all motions, and make all necessary orders in any cause depending in the said court, previous to the hearing and making of the final decree: And the said judges shall cause the principal facts and reasons, on which they found their decree, in each cause, to appear on record.—(g.)

CXXXVII. Each of the said judges shall have power, at chambers, to make orders of reference to the master, or commissioner, in any cause depending in the court of equity, which may be ready for a reference, before the final hearing of the same: Provided the party applying for such reference shall have given ten days' notice, to the opposite party, of the time

(a)—1791, 1st Faust, p. 30. (b)—1792, Ibid. p. 291. (c)—1720, P. L. p. 110. (d)—1712, Ibid. p. 96. (e)—1791, 1st Faust, p. 21. (f)—1784, P. L. p. 337. (g)—1791, 1st Faust, p. 33.

and place, and judge, before whom he intends to make a motion for that purpose.—(h.)

CXXXVIII. It shall be the duty of the judges in equity to make such rules and regulations, as may be necessary to carry all acts respecting the said court more fully into effect.—(h.)

CXXXIX. All writs of subpoena *ad respondendum*, issuing out of the said court of equity, shall require the defendants to appear in the said court, on a day certain, and shall also require the defendants to file their pleas, answers, or demurrers, within thirty days next after the day of appearance, as aforesaid : And the said writs shall be served at least ten days before the appearance day therein expressed.—(m.)

CXL. The master, or commissioner, of the said court, or any one of the judges at chambers, shall have power, on good cause shewn on oath, to extend the time to plead, answer, or demur, for such period as shall be deemed necessary : Provided the same does not extend beyond the time appointed for docketing the causes for the next court of the district, wherein the cause may be depending, in which such order for extension is made : And in case the defendant, or defendants, shall not file his ~~her~~  
or their plea, answer, or demur, within the time limited, the register or commissioner of the said court shall, at the expiration of the said time, grant an order that the bill shall be taken *pro confesso* ; and unless the said order shall be set aside by the court, on application of the defendant, or defendants, on such terms, as the said court may prescribe, the said court shall make such decree therein, as shall appear just and equitable, and issue the process necessary to enforce the execution thereof (a) : But the said court shall nevertheless, have authority to continue any cause depending therein for a longer term than three years, with consent of the parties, or on good and sufficient cause shewn in any case, where there ~~shall~~ have been pronounced any decretal order within the term of three years from the filing of the bill.—(s.)

CXLI. Whenever an order shall be granted, that the bill shall be taken *pro confesso*, on application of the complainant, or his solicitor, stating that the answer of the defendant, or defendants, is necessary to enable the court to pronounce their final decree, the commissioner, or register, shall issue an attachment against such defendant, or defendants, to compel such answer in the usual form ; and no previous rule requiring the defendant to show cause why such attachment should not issue, shall be necessary.—(a.)

CXLII. If in any suit in the said court, a defendant, against whom process shall issue, shall not cause an appearance to be

(h)—1808, Sess. Acts, p. 31. (m)—Ibid, p. 32. (a)—1808, Sess. Acts, p. 83-8. (s)—1810, Sess. Acts, p. 79.

entered thereupon, as it ought to have been, if such process had been duly served, and affidavit shall be made to the satisfaction of the court, that such defendant is without the limits of this state, or that, on enquiry at his, or her, usual place of abode, he, or she, could not be found to be served with such process, the said court may make a rule, or order, directing such defendant to appear at a certain day therein to be appointed; and a copy of such order shall, within ten days after the making thereof, be inserted in the South-Carolina gazette, and continued for three months, and another copy thereof shall be posted up at the door of the court-house of the district, wherein such proceedings shall be had: and if the defendant shall not appear within the time limited by such order, on proof made to the satisfaction of the court, of the publication thereof, as aforesaid, the court may order the complainant's bill to be taken *pro confesso*, and make such decree thereon, as shall appear just and equitable, and issue the process necessary to compel the performance thereof; the complainant first giving sufficient security in such sum as the court shall direct, to abide such order as may be made on the defendant's appearing to the suit, and paying such costs to the complainant as the court shall order: Provided, that if any person, against whom such decree shall be made, his, or her, legal representative, shall, within four years after passing the said decree, if without the limits of the United States, and within two years, if absent from this, but within the United States, appear in court, and petition to be heard with respect to the matter of decree, and shall pay down, or give security for the payment of, such costs, as the court shall think proper, the person so petitioning shall be permitted to answer, plead, or demur, to the bill, and such proceedings shall be thereupon had in the said suit, as there might have been in case the party had originally appeared, and as if no previous order or decree had been made in the case.—(b.)

CXLIII. In cases under the value of four hundred and twenty-eight dollars and sixty cents; and, in cases which may not be litigated, it shall not be necessary to proceed by bill and answer in the said court; but the party complaining shall be at liberty to present his petition to the said court, on oath, setting forth the true nature of the case, or sum really due; a copy of which petition shall be served on the opposite party at least thirty days before the sitting of the court, with notice thereon to appear at a certain day in order to answer, if necessary, the said petition: and if the party so served with a copy of the said petition, shall not appear at the time and place in the said notice mentioned, or, if appearing, shall not offer some substantial defence, the said court shall proceed to make such order, or de-

ercent therein, as to justice and equity shall appertain: Provided that, if the defendant shall appear at the return of the said petition, and shew sufficient cause, on oath, for going into a more ample investigation of the case, then the said parties shall be at liberty to go into the examination of witnesses to prove and substantiate their respective allegations, as in other cases.—(c.)

CXLIV. The examination of all witnesses, who may be called on to give evidence in the said court, shall be taken by word of mouth, and in open court, subject to such regulations and exceptions, as the said court may, from time to time, order and direct, (o) : Provided always, that where it may be necessary to examine aged or infirm persons, or witnesses out of the state, it shall be lawful for the said court to issue a commission, or commissions, to examine such witnesses upon interrogatories; whose depositions, when taken, shall be read as evidence in any of the districts of this state.—(d.)

CXLV. If any defendant shall be in custody at the time a decree shall be made, upon refusal, or neglect, to enter an appearance, or to appoint an attorney; or shall not be forthcoming, so as to be served with a copy of the decree before any process shall issue to compel the performance thereof, if such defendant shall die in custody, before such copy is served, the representatives of such deceased defendant, to wit, the heir or heirs at law, if any real estate be affected thereby, or if only personal estate, the executors or administrators, shall be served with such copy within six months after such death: and if the heir, executor, or administrator, be out of this state, then the said decree shall be published in the South-Carolina gazette, and also posted up at the front door of the court-house, for three weeks previous to further proceedings.—(g.)

CXLVI. In all cases where payment of money is decreed by the said court, it shall be lawful for the party, to whom such payment is to be made, to sue forth, at his option, either the usual process for compelling performance of the said decree, or a writ in nature of a *fieri facias*, to make the estate, both real and personal, of the party, by whom such money is to be paid, liable to the satisfaction thereof, in the same manner, as it is on such a writ from the court of common pleas; and the sheriff of the district, in which the estate levied upon lies, shall have the same power to sell and convey the same, as he hath on a *fieri facias* from the court of common pleas, and be entitled to the like fees for the execution thereof.—(h.)

CXLVII. On all decrees entered, or enrolled, in any court of equity within this state, satisfactions may be entered by application, to any judge of the said court, under such rules and regulations as the judges of the said court shall prescribe.—(n.)

(e)—1791, 1<sup>st</sup> Faust, p. 32-3. (o)—Ibid, p. 30. (d)—Ibid, p. 32. (g)—1784, P. L. p. 338. (h)—Ibid, p. 361. (n)—1817, Sess. Acts, p. 27.

**CXLVIII.** The master of the court of equity shall, in all cases pending in the equity district of Charleston, have the same power and authority, as a judge at chambers, to grant orders for writs of *ne exeat*, and attachments, in all cases of practice; and the commissioners in equity, in the several other districts, shall, in all cases arising, or pending, within their respective districts, have power to issue writs of *ne exeat*, and attachments, in all like cases, without any previous order, upon such evidence, and under such circumstances, as would authorize a judge at chambers to make orders therefor.—(a.)

**CXLIX.** Whenever any person shall be dissatisfied with a judgment at law, and think himself relievble in equity, he may, at any time, within forty days after the adjournment of the court, at which such judgment was obtained, give notice, by himself, or his attorney, in writing, to the sheriff of the district, with whom execution may be lodged, that he means to file his bill in the court of equity, praying for a writ of injunction, and shall annex thereto, an affidavit of such intent; and such sheriff, on being served with such notice and affidavit, within the said time, whereof he shall make true entry in his books, shall be bound, on receiving security, as hereinafter prescribed, to stay further proceedings on such execution: Provided the said notice and affidavit be served on him before actual sale of the property; and in cases where levies shall have been made, on moveable property, the complainant, on giving bond, to the sheriff, with two good sureties, to be approved by him, subject to the future approbation of the court, in a sum equal to double the real value of the property so levied on, and conditioned to return, in good order, to the sheriff, the whole of the said property, if the said complainant does not procure from the court of equity, and cause to be served on him, a writ of *injunction*, within thirty days from the date of such bond, shall be entitled to receive back, and retain, all such moveable property; and the complainant shall be bound to proceed to file his bill, and apply for an injunction, according to the rules and practice of the court of equity, within twenty days after giving such bond to the sheriff; and if no writ of injunction, issuing out of the said court, shall be served on the said sheriff, within thirty days after his taking said bond, commanding him to stay proceeding under such execution, he shall then proceed to seize, and take again, into his possession, the said property, and sell the same, after giving the legal notice; and if the said complainant shall not forthwith surrender and deliver up such property, the said sheriff shall assign the said bond to the plaintiff in the suit at law, who may commence an action thereon, and proceed to recover from the said defendant at law, and his sureties, the amount of the penalty of tho-

said bond, with costs of suit; in which suits no imparlance shall be allowed.—(a.)

CL. Any party applying for an injunction to stay proceedings in an action at law, or judgment, or execution, or the levying of execution, shall be entitled to such injunction, on making oath, or affirmation, according to the form of his religious profession, to the truth of his bill, and giving bond to the plaintiff at law, with security to be approved by the master, or commissioner, in equity, for such sum, and with such condition, as the court shall direct, if, upon the merits of the motion for such injunction (of which motion due notice shall always be given to the adverse party,) the complainant shall appear, from the equity stated in his bill, to be entitled to an injunction.—(b.)

CLI. No injunction shall continue of force longer than till the next sitting of the court, after the defendant shall have put in his answer to the bill of complaint, unless the court shall see cause to continue the same; but nothing herein contained shall extend to injunctions for staying of waste, and all such injunctions for staying of waste shall be granted of course on affidavit, before the master, or commissioner, of the said court, that the party praying such injunction, hath been three years in the quiet and peaceable possession of the lands where such waste shall be said to have been committed.—(c.)

CLII. A court of appeals shall be established for the court of equity, and shall exercise appellate jurisdiction in all cases brought up from the circuits, and shall be holden at Charleston court-house, for the Southern Circuit, on the first Monday in January, and second Monday in March, in every year; (o) and at Richland court-house, for the Northern and Western Circuit, on the second Tuesday after the ending of the common pleas circuits, in the spring and fall of every year; and it shall be the duty of all the judges of the court of equity to attend at the said courts of appeal, and to hear and try all appeals that may be brought up from the courts annexed to the said circuits respectively.—(d.)

CLIII. Any person wishing to appeal from any order, or decree of any judge, presiding on the circuit, shall, before the rising of the court, at which such order, or decree, is made, state, in writing, the grounds on which he intends to appeal from the said order, or decree, at the next court of appeals, for the said circuit; and the said appellant shall be thereafter at liberty to move to have copies of all the necessary papers sent up to the court of appeals, and to place his cause upon the docket of the same, at any time before the sitting thereof, without being subject to any other rules, or forms, heretofore adopted.—(d.)

(a)—1791, 1st Faust, p. 157. (b)—1784, P. L. p. 338. (c)—1721, P. L. p. 110. (c)—1811, Sess. Acts, p. 52. (d)—1808, Sess. Acts, p. 30, ibid, 1814, p. 40.

**CLIV.** The commissioner appointed for the district of Columbia, shall exercise all the powers of a master and register in equity, both for the circuit court, and court of appeals, to be holden at Richland court-house.—(g.)

**CLV.** The sheriff of Richland shall exercise the duties of a sheriff, in the court of equity, as well for the court of appeals, as for the district of Columbia.—(g.)

**CLVI.** Proper and fit books shall be provided and kept by the clerks of the said courts of appeal respectively, at Columbia, and at Charleston, whose duty it shall be, respectively, to record therein, the opinions of the judges; which opinions of the said judges shall be duly filed and kept together by the said clerks, respectively, in their said offices, that they may hereafter be forthcoming, and subject to the further disposal of the general assembly of this state: And for the recording thereof, in the books to be kept for that purpose, as aforesaid, each of the clerks of the said courts, shall be allowed and paid, by the state, the same recording fees as the clerks of the district courts are entitled to, for the recording of judicial proceedings in their respective offices. The citizens of this state shall have access to the said books, as fully as to other books of record in any of the public offices in this state; and fit and proper indexes to the said books shall be correctly kept, by the said clerks, in their respective offices; the said books to be furnished to the said clerks, at the expense of the state, and to be continued in the said offices, respectively, by them, as the property of the state; and it shall be the duty of the said clerks, respectively, whenever required, to furnish exact copies therefrom, or of any part thereof, to such person, or persons, as may have occasion to demand the same; and the said clerks, respectively, shall be entitled to demand and receive of, and from, such person and persons, for such transcript thereof, the same fees, as the clerks of the district courts of this state are entitled to, for exemplifications of their judicial records.—(r.)

**CLVII.** The judges aforesaid, at their meeting and sitting for the purposes aforesaid, both at Columbia, and at Charleston, shall, respectively, give their reasons, in writing, either for granting, or refusing new trials, on such motions for that purpose, as may be submitted to them; which shall also be recorded in manner aforesaid, and be subject, in every respect, to the regulations contained in the preceding section.—(s.)

**CLVIII.** The grounds and reasons on which the decisions on appeals from the circuit courts of equity, respectively, shall be made by the judges of the said courts, shall be given and subscribed by them, in writing; and shall be recorded at Charleston, by the register of the court of equity there, who shall also

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(g)—Sess. Acts, p. 31. (r)—1811, Sess. Acts, p. 49. (s)—Ibid, p. 50.

## JUDICATURE.

by register of the court of appeals, directed to be holden at Charleston court-house; and at Columbia, by the commissioner of the court of equity, for Columbia district, who shall also be register of the court of appeals, directed to be holden at Richland court-house: who shall, respectively, keep proper books for that purpose, which shall be indexed in such a manner, that the decisions therein recorded shall be promptly and readily come at; which book shall be furnished at the public expense, and belong to the public, as the property thereof. And the registers of the said courts of appeal, shall be entitled to fees for their services therein, which shall be regulated, as nearly as may be, by the fees allowed for similar services to the registers and commissioners of the courts of equity—(c.)

**CLIX.** It shall be lawful for any person, who may be desirous of changing his, or her, name, for that of another, to exhibit a petition, in writing, to any of the judges of the courts of common law, or equity, of this state, in open court, setting forth in said petition, the reasons, why he, or she, is desirous of changing his, or her, name, together with his, or her age, place of residence, and nativity, and the name, by which he, or she, wishes thereafter to be called and known; upon which petition, and the reasons therein contained, it shall be the duty of the judge to determine, and grant, or not grant, the prayer thereof, as to him shall appear proper, having a due regard to the true interest of the petitioner: And whenever the prayer of such petitioner shall be granted, it shall be the duty of the clerk, or commissioner, of the said court, to enter the same on the minutes of the court, and to file the original petition, with the fiat of the judge, among the papers of his office, and to deliver to the petitioner a true copy of the said petition, together with a copy of the judge's order thereon, properly certified, and under the seal of said court; for which the said clerk, or commissioner, shall be entitled to, and receive, from the petitioner, the sum of five dollars, and no more; which proceedings, so certified, as aforesaid, on being produced to the secretary of this state, shall, by him, be recorded in a book to be kept in his office for that purpose; whose duty it shall be, forthwith, to deliver to the petitioner, a true copy of such record, with the seal of the state affixed, for which the said secretary shall be entitled to, and receive, from the petitioner, the sum of five dollars, and no more: And upon the seal of the state being affixed to the record aforesaid, and delivered to the petitioner, his, or her, name, shall be, thereby, immediately changed to that contained in the record.—(d.)

**CLX.** In all cases, whether in law, or equity, the person so changing his, or her, name, may sue, and be sued, plead, and be impleaded, by his, or her, new name, and no other: And in all

(c)—1811, Sess. Acts, p. 50. (d)—1814, Sess. Acts, p. 14.

cases, where an action, or actions, shall be pending at the time of such alteration of names, the same shall not abate by the party's name being changed; but the record, on motion, shall be amended, by expunging the old name, and inserting the new name, of the party: And in all cases, whether in law, or equity, where the party changing his, or her, name, is bound by obligation, or otherwise, the effect of which obligation would extend to, and impose any obligation on, the heirs, executors, or administrators, of the person having so changed his name, the same heirs shall be, and remain bound, to all intents and purposes, in the same manner, and to the same extent, as if the said party had not changed his, or her, name.—(a.)

**RULES OF THE COURTS OF SESSIONS AND COMMON PLEAS OF SOUTH-CAROLINA.**

*Rules to Plead.*

I. Every rule to plead, shall be posted on one of the doors of the court-house:

*Orders for Judgment.*

II. On affidavit made, of the posting of the rule to plead, in manner aforesaid, if no plea be filed within the rule, the clerk shall enter an order for judgment on the record, and in the book of rules; and the plaintiff shall be at liberty to enter up judgment by default: Provided that, if the defendant, or his attorney, shall apply to the court, on, or before, the second day of the term next after such order is given, to vacate the said judgment, the same shall be vacated, on payment of the plaintiff's costs, in obtaining such order; the defendant, at the same time, pleading an issuable plea, and going to trial instanter, if the plaintiff, or his attorney, think proper to do so, and submitting to such other terms, as the court, upon the merits of the application, shall see fit to impose.

*Pleadings.*

III. Replications and all subsequent pleadings, shall be filed within ten days after posting the rule to file such plea; in default whereof, the plaintiff's attorney, shall be at liberty to take his order for judgment, or the defendant's attorney, his judgment on non pros; which may be set aside, on motion, at the time, and on the terms, and conditions, expressed in the record rule for setting aside orders for judgment.

IV. A copy of every deed, bond, open account, or other writing, declared on, shall be filed at the clerk's office, at the time of filing the declaration; and the defendant, or his attorney, shall have over of the original, if he thinks proper to demand it, before he shall be required to file his plea; but this demand must be made before the rule to plead expires.

(a)—1814, Sess. Acts, p. 16.

## JUDICATURE.

V. If any frivolous or deceitful plea shall be filed, the adverse party shall not be obliged to demur to the same : but such plea shall, on motion, be rejected by the court ; and such judgment, or order, shall be awarded thereupon, as shall be agreeable to justice.

VI. No plea of plene administravit shall be admitted in any action against executors, or administrators, unless the defendant, pleading such plea, do file, with the same, in the clerk's office, a free and particular account of his administration, upon oath, with an office copy of the inventory and appraisement of the estate; to the end, that it may appear to the court, that the personal offsets of the testator, or intestate, are really administered to the extent pleaded by the defendant.

VII. Every rule requiring the adverse party to proceed in his pleadings shall be posted in the manner prescribed by the first rule.

*Attorneys &c. not to be Bail.*

VIII. No attorney shall be suffered to be bail for any person whomsoever, on pain of being struck off the roll ; and the sheriff is hereby directed not to take any such bail, or the bail of any officer of the court, on pain of being severely amerced.

*Judgments.*

IX. The clerks of the respective courts shall keep a book, on docket, in which, at the end of every court, they shall, without fee or reward, enter the names of the parties to every judgment entered, with the number of the bill, on entry of such judgment ; and shall reserve a blank column, or columns, in which shall be entered the execution, which shall issue on every such judgment, together with the nature of such execution, and the time when issued ; and also, when such judgment is satisfied.

X. If any judgment shall not be entered on the same time, or court, in which the same shall be obtained, the parties shall be at liberty to enter any such judgment, on or before the last day of the court, or term, next ensuing, without paying any other fee for the same, than if such judgments had been entered in the same court, or term, in which the same was obtained : and no judgment shall be entered up after such second term, without giving a term's notice to the adverse party, or his attorney, of his intention to enter up the same.

XI. No judgments obtained at any circuit court shall be entered up previously to the day of the court's rising.

*Executions.*

XII. All writs of execution shall be returned, regularly, into the office of the clerk of the court, from whence they issue, to be there filed and kept ; and no clerk shall affix the seal of the

court to any renewed execution, unless the one previously issued be first delivered to him, to be kept and filed, as aforesaid; or unless authorised by a judge's order granted, or proof of the loss of the previous execution.

*Dress.*

XIII. The habits of the gentlemen of the bar shall be black gowns and coats; and no gentleman of the bar shall be heard, if otherways habited; nor shall any member of the bar be allowed to take his seat there, unless he be first robed; nor to continue seated, unless he also continue in his robe: and it shall be the duty of the sheriff to attend to the execution of this rule.

XIV. The clerks, and sheriffs, shall also wear black coats; and the sheriffs, a military hat and sword.

*Renunciations.*

XV. Whenever a renunciation of inheritance, or dower, shall be taken under a commission, one, at the least, of the commissioners shall make oath, before some magistrate, that such commission was duly executed: and all such renunciations and commissions shall be duly recorded.

*Insolvent Debtors.*

XVI. Whenever any person shall apply for the benefit of the insolvent debtors' acts, or of the prison bounds act, if he shall fail to make his motion on the day upon which his creditors are requested by his advertisement to shew cause, he shall, in addition to the notice published in the gazette, cause three days' notice to be given to the persons, at whose suit he may be in custody, or their attorneys, of the day wherein he intends to move that his petition be taken into consideration.

*Docket.*

XVII. All issues shall be entered on the docket, before the court meets, on the first day of the term.

XVIII. All issues entered on the docket shall be called over, and tried in their order, as docketed.

XIX. All cases for new trial shall be placed at the head of the docket.

XX. All cases continued by onset, shall be placed at the foot of the docket.

XXI. If any issue, writ of enquiry, or summary process, docketed, shall be called at four courts, and not tried, the plaintiff shall be called; and if he does not immediately go to trial, he shall be non-suited: unless it shall appear, that it had been continued at defendant's motion, or other satisfactory cause shall be shown to the court, on oath, to prove it was not postponed from the plaintiff's neglect; or unless the defendant

## JUDICATURE.

should, at such fourth calling, obtain a further continuance. Nothing in this rule shall be construed to prejudice defendant's right of calling for a non-suit, at any previous court.

XXII. No clerk shall enter a cause upon the docket, unless the pleadings are fully made up.

XXIII. No cause shall be entered upon the docket, except by the clerk, or his deputy.

XXIV. Causes marked on the docket "plea withdrawn," or "writ of enquiry," shall not be placed on the docket of the next term, without special permission of the court.

XXV. Upon calling the docket, no motion for a continuance shall be granted on the ground of the absence of a witness, without on oath to the following effect, to wit: that the testimony of the witness will be material to support the action (or defence) of the party moving, that his motion is not intended for the purpose of delay; but, solely, because he cannot, with safety to his cause, go to trial without such testimony; that he has made use of due diligence to procure the witnesses; or of such other circumstances, as will satisfy the court, that the motion is not intended merely for delay. And in all cases, where a writ of subpeona has been issued, the original shall be produced, and proof of the service, or of the reason why not served, endorsed thereon: but, if lost, the same proof shall be offered, with the additional proof of the loss of the subpeona.

XXVI. When the issue is made up, the parties shall be bound to come to trial at the ensuing term, without a notice of trial.

XXVII. The clerk shall regularly preserve every docket, as a record of the court; and, on each docket that he shall make out, he shall not only number the causes thereon, but shall mention the number of terms that they have been at issue.

XXVIII. The clerk shall always prepare a docket of the traverses, at each court of sessions, which shall be called in due order; and the cases shall be disposed of as they are called.

XXIX. After the court is opened, and until it adjourns, each day, the judge's dockets shall not be subject to the inspection of the bar, or their clients.

XXX. The court will proceed to call over the docket of writs of enquiry, or process, each day, previous to calling the docket of issues, until they shall have consumed one hour, or at any other time, when not occupied by other business.

XXXI. If the business of the sessions should not occupy the court, till the usual hour of adjournment, the business of the common pleas shall always be immediately commenced.

*Writs of Inquiry.*

XXXII. All causes, in which writs of inquiry are to be executed, shall be entered on a docket, to be kept in the clerk's office, for that purpose, on, or before, the meeting of the court, on the

first day of the term; and no writ of inquiry shall be executed in any case not docketed.

XXXIII. If any rule to plead should expire during the term, and the defendant fail to plead, the plaintiff may take his order for judgment, docket his cause among the writs of inquiry, and execute his writ of inquiry, during the same term, according to the act in such case made and provided.

XXXIV. Writs of inquiry, shall be entitled to precedence, according to their order on the docket.

*Summary Process.*

XXXV. All causes within the summary jurisdiction of this court, shall be entered on a docket, to be opened in the clerk's office for that purpose, on, or before, the meeting of the court, on the first day of the term; and no case shall be heard, if not so docketed. If the plaintiffs do not enter their causes on the docket, for trial, the defendants may, at any time, during the term, enter them for dismission.

XXXVI. If the plaintiff in an action, by summary process, shall desire to have the benefit of defendant's oath, he shall state, in writing, the points to which he shall require his oath, and serve him with a copy thereof, with notice of such his intention, at least one day before the hearing of the cause; and the defendant may either give his answer, in writing, to be sworn to before the clerk, or, ore tenus, in open court; and if a defendant shall desire the benefit of the plaintiff's oath, he shall proceed to require it in the same manner; and, in case either plaintiff, or defendant, shall be absent from, and without the limits of the state, and it shall appear to the court, by application made, on oath, that the testimony of such absentee is necessary to the justice of the case, the person, who is desirous to obtain the same, may issue a commission for that purpose, and a term shall be allowed to the party applying.

XXXVII. In all actions within the summary jurisdiction of this court, a copy of the deed, note, open account, or other writing, on which the action may be founded, shall be indorsed on, or annexed to, both the copy process and original.

*Juries.*

XXXVIII. To all writs of venire, issued for summoning jurors, the sheriff, or his deputy, shall make a return, on oath, written at length, before the clerk of the court, from which the venire issues, of the service of the summons; or notices, served on the persons, whom he is commanded to summon; and such return shall be made by the sheriff, or such of his deputies, as shall, respectively, serve the same, immediately on their return from summoning them. The sheriff, in his return, shall make one class of those who were summoned personally; a second

class, of those for whom summons were left at their houses; and a third, of those who could not be found.

XXXIX. If any juror, once impanelled, and sworn, shall refuse, or neglect, to attend, punctually, on the call of the panel, every morning, the clerk shall note such default; and the defaulter shall be, forthwith, served with a rule, to shew cause, why he should not be fined for his default. If, upon service of such rule, he shall fail to come, immediately, into court, to make his excuse, or such excuse should appear to the court insufficient, such juror shall be fined according to law.

*Awards.*

XL. Upon the return of an award, or umpirage, a one-day rule shall be served upon the party, or his attorney, against whom the award, or umpirage, shall be made, to shew cause why the award, or umpirage, should not be confirmed; and if the award, or umpirage, should be confirmed by the court, then judgment shall be thereon entered, and execution issued against the body, or goods, of the party, in the same manner, as if a judgment had been obtained on verdict.

*Declarations not to be taken from the office.*

XLI. No clerk shall permit a declaration to be taken from his office, after it is filed, until issue be joined, or an order for judgment obtained. In the former case, the plaintiff only, shall be entitled to possession of the pleadings; in the latter, the party, in whose favor the order for judgment is entered. Either party shall be at liberty, at any time, to inspect the pleadings, and to take a copy thereof.

XLI. If the plaintiff should not file his declaration before the first day of the second term, after the return of the writ, he shall not be permitted to file it afterwards, without obtaining leave to do so; and he shall give four days' notice to the adverse party, of the time and place, when, and where, he intends to move for such leave; unless the motion is made in open court, in which case, one day's notice shall be deemed sufficient.

*Foreclosing Mortgages.*

XLIII. In suits on bonds, or other papers, secured by mortgage, of real estate, the plaintiff shall obtain judgment, as in other cases; and if he wishes to have a special order for the sale of the property mortgaged, he shall, at any time pending the suit, or after judgment, file a suggestion, stating the time, where, the parties by, and to whom, and the condition, upon which the same was made, and the description, buttings and boundings of the land, and such other particulars, as may be necessary to bring all the circumstances before the court; and, when this is done, he shall serve, on the defendant, or his attorney,

hey, a ten-day rule, to shew cause, why such mortgaged estate should not be ordered to be sold; and, upon the return of that rule, he may move the court for such order.

**XLIV.** Orders for the sale of mortgaged property, to effect a foreclosure in this court, shall be to the following effect: that, if the defendant shall not within        after this date, pay to the plaintiff, the full amount of principal, interest, and costs, due by him, on that day, the sheriff shall proceed to sell the premises, on a credit of        months; the titles to be signed; but not delivered until the money be paid, according to the terms of sale: And if the amount of the purchase money be not paid, when due, the sheriff shall re-sell, by virtue of the same levy, on account of the former purchaser, for cash.

*Sheriff's Sales.*

**XLV.** All sheriffs' sales, of lands, houses, and negroes, shall be held, and take place, at the court-houses of the several districts, respectively, and household furniture, plantation utensils, carts, waggons, stock of horses, cattle, and such other personal effects, shall be sold, at the discretion of the sheriffs, either at the respective plantations, or places, where seized, or at the nearest convenient public place thereto; which place shall always be mentioned in the sheriff's advertisement.

*Motions at the Circuit Trial Court.*

**XLVI.** Every attorney, who shall think proper to bring forward any motion against the decision of a circuit court, or question on a point of law, shall give notice thereof, in writing, with the grounds, on which he intends to rest his motion, to the opposite attorney, and the presiding judge, before the rising of such court.

**XLVII.** Wherever any motion is to be brought before the judges, at Columbia, or in Charleston, a brief, setting forth so much of the circumstances of the case, as may be necessary to bring, fully, before the court, every point to be decided by them, shall be served, by the party making the motion, upon each of the judges, at the opening of the court, on the first day, at Columbia, or three days before the meeting of the court, in Charleston, if the case is to be argued there. The brief shall also contain the grounds, on which the party means to rest his motion; and, if he means to offer any affidavits to the court, the adverse party shall be served with copies of them, so as to allow a reasonable time for answering them; or such affidavits shall not be heard. If any party giving notice of his intention to make such a motion, shall fail to comply with this rule, or fail to docket his case, before the meeting of the judges, on the first day, his motion, or rule, shall be discharged, upon application, by the adverse party. No ground of objection in any such case

shall be taken by the counsel, which is not expressed, or necessarily implied, in the brief, and notice, or which was not made in the court below.

**XLVIII.** On the first day of the sitting of the court, either at Charleston, or Columbia, the causes, in which such motions have been given, shall be entered on the paper of causes; and no cause shall be heard, unless so entered.

**XLIX.** In every case, where notice of such intended motion shall be given, the attorney, who has given it, shall prosecute it to a decision, agreeably to his notice; or the adverse attorney shall be at liberty to proceed in like manner, as if no notice had been given: And, in case any cause shall be adjourned from one court to the other, the same shall be prosecuted in the court, to which it is adjourned, in like manner; at the next succeeding court; otherwise the adverse attorney shall be at liberty to proceed in like manner, as if notice had been given: Provided nevertheless, that in all cases, in which good and sufficient cause shall be shewn, the court may grant further time for hearing such motion.

**L.** In all cases, in which a party shall receive notice of a motion for a new trial, or in arrest of judgment, he shall have leave, notwithstanding, to enter up his judgment, and lodge his execution to bind property; but if the motion be sustained, the judgment and execution shall be wholly set aside.

**L1.** When the court is open, and sitting, no rule, or order, shall be granted, or made, which can be obtained, in course, at the clerk's office, unless specially ordered by the court; nor shall any paper be filed in court, during the hours of the court's being open; and every rule, or order, made, and every filing of every paper, contrary to this rule, shall be void.

**LII.** No defendant, in the court of sessions, shall be at liberty to submit any affidavit to the court, which goes to deny matter of fact, after a verdict against him; but shall confine himself to matters in extenuation, or mitigation, only: And these affidavits shall be filed, so as to allow the attorney general, or solicitor, a reasonable time to answer them, or they shall not be heard.

**LIII.** On all rules, to shew cause, the party called on shall begin and end his cause; and on all special matter, either springing out of a cause at issue, or otherwise, the actor, or party submitting a point to the court, shall, in like manner, begin and close: And so shall a defendant, who admits the plaintiff's case, and takes upon himself the burthen of the proof, have the like privilege.

**LIV.** No attorney of this court, shall ever attempt to argue, or explain, a case, after having been fully heard, and the opinion of the court has been fully pronounced, on pain of being considered in contempt.

**LV.** Every motion made, for any rule, or order, shall be submitted to the court, in writing, by the counsel, who makes it; and, if granted by the court, shall be delivered to the clerk.

**LVI.** The clerk of each court, shall keep a book, in which shall be entered, the names of all persons, who have been summoned as jurors, or bound in recognizances, and have made default; and shall note, opposite to the name of the defaulter, whether he be fined, or excused; and, if fined, the amount of the fines; or, by whom, and when excused: And the clerk shall enter in this book, the amount of fines laid, or incurred by law, by any other persons than those referred to in this rule, with the names of such persons, as are fined, or who incur them, in a column shewing when the fine was paid, or why it was not.

#### *Surveys.*

**LVII.** Surveys of lands, in any quantity, of two hundred acres, or less, shall be laid down by a scale of ten chains to the inch: All over that quantity, by a scale of twenty chains to an inch.

**LVIII.** No survey made under a rule of court shall be received in evidence, unless it appears that, at least fifteen days' notice, of the time and place of commencing such survey, was given to the opposite party, by the one who offers it in evidence.

**LIX.** Every surveyor shall represent, in his plat, as nearly as he can, the different enclosures of the parties, and the extent, or boundaries, within which each party may have exercised acts of ownership.

**LX.** After a cause has gone to a jury, and any evidence been heard in it, neither party shall be allowed to make any objection to a rule of survey made in the case, or the manner in which it may have been obtained, or the survey executed.

#### *Commissions.*

**LXI.** Upon every commission, returned by the post, one of the commissioners, who examined the witness, shall indorse, and sign, a certificate, that the same was lodged by himself, in the post office; or publication shall not be ordered.

**LXII.** Commissions for examining witnesses, when executed, may be returned by post, provided they be sealed up, directed to the clerk of the court from which they issue; deposited in the post office, by one of the commissioners.

#### *Constitutional Court.*

**LXIII.** No motion brought up by defendant, from the court of sessions, in any district, for a new trial, or in arrest of judgment, shall be heard by the constitutional court, unless the defendant be present; and, if he be not present, the notice shall be

dismissed, without argument; unless his absence be occasioned by imprisonment, or sickness.

**LXIV.** It having been decided by the constitutional court, at Columbia, that all motions, to be brought before that court, from any district on the eastern circuit, shall be heard in Charleston, no such motion shall hereafter be heard anywhere else: All motions, to be brought from any other district, shall be heard at Columbia only.

**LXV.** Every brief served upon the judges, shall be written upon a sheet of paper, of the size of propatria paper; and shall be indorsed with the names of the plaintiff and defendant, and of their attorneys, with the district, term, and year when, and the name of the judge, before whom the case was tried, with the nature of the motion; as, for example:

Lancaster, April 1802.

A. B. Plaintiff,	vs.	E. F. Plaintiff's attorn.	Motion for new trial.
C. D. Defendant.		G. H. Defendant's attorn.	

Tried before Judge

*Juries and Jurors, and Venires.*

**LXVI.** The sheriff, or his deputy, shall serve a written summons on each juror, expressing the day, hour, and court, at which he is to appear, and the penalty for default; and also whether he is to serve as a grand juror, or petit and common pleas juror; and if he neglects to comply with this rule, or any part of the 16th section of the old jury law, passed 20th August, 1731, he shall be amerced according to the 17th and 25th sections of the said jury law.

**LXVII.** Within ten days after the adjournment of such court, the clerk thereof shall issue to the sheriff, a writ in nature of a scire facias, upon a recognizance, commanding him to summon each and every juror noted for default, at that court, to shew cause, by affidavit, at ten o'clock on the first day of the next term, why they should not be fined according to law, for failing to attend and serve as grand, or common pleas, or petit jurors, as the case may be: And the sheriff of each district, upon receipt of such writ, shall proceed to serve, on such juror mentioned in the said writ, a notice, in writing, to appear accordingly; which notice shall be either served personally, or left at his usual place of residence: And, on the day prescribed by law, for the return of writs, the sheriff shall, regularly, make return of the said writ; and, at the meeting of the court, the clerk shall deliver all these writs to the attorney-general, or solicitor, who shall, on the second day of the term, move the court for executions on the same.

**LXVIII.** After drawing every jury, the clerk shall fold up the names of the jurors drawn, in paper, and indorse thereon, when they were drawn, and for what term.

*Constables.*

**LXIX.** In each district, at least eighteen constables shall be appointed; and, at least that number shall be always kept up. Nine of them, in rotation, shall be summoned, in writing, by the sheriff, to attend each court. Those who do not appear, according to their summons, shall be proceeded against by the clerk, sheriff, and attorney-general, or solicitor, in the manner prescribed against jurors, who make default; unless the court think fit to proceed more summarily against them.

**LXX.** Every clerk shall keep a separate and accurate list of all the constables appointed, placing their names in one column, the dates of their qualifications in another, and the dates of their deaths, or discharge, in a third.

**LXXI.** Every sheriff shall always keep, at least, nine staves in good order, for the constables, on pain of being amerced.

*Sheriffs' Sales in Georgetown.*

**LXXII.** All sheriffs' sales, in Georgetown, shall be made at the market.

*Exemplifications.*

**LXXIII.** It shall not be necessary, hereafter, that the clerk shall swear to any exemplification certified from his office.

*Rules.*

**LXXIV.** Every clerk and sheriff, who cannot produce all the rules of court, when required, shall be fined ten dollars for such default.

*Filing Papers.*

**LXXV.** No declaration shall be filed, unless written, cross-wise, upon a whole sheet of paper, of the size of propatria paper, and folded, and indorsed, according to the established custom; nor shall any plea, demurrer, or other pleading, be filed, unless written upon the declaration, or upon, at least, a half sheet of paper of the same size.

*Motions at Chambers.*

**LXXVI.** At chambers, no motion for a rule to shew cause, why any judgment, or execution, should not be set aside, for irregularity, or other cause; or why the proceedings upon any judgment, should not be staid, shall ever be heard, unless, the party intending to move for it, shall have previously given, to the adverse party, reasonable notice thereof, in writing; and shall, also, have served upon him, copies of every affidavit, and office certificate, intended to be submitted to the judge, so as to

## JUDICATURE.

allow him sufficient time to answer the same, by counter affidavits and certificates, if necessary; and the party about to make the motion, shall prove, by a sufficient affidavit, before he is heard, that he has complied with every particular required by this rule.

LXXVII. No motion, of the nature of those mentioned in the last rule, shall ever be heard at chambers, unless it shall appear, by a sufficient affidavit, that the ground of such motion was unknown, or, that it was never in the party's power to have made such a motion in open court, during any previous court.

*Admissions.*

LXXVIII. In the absence of any party, or his attorney, no admission shall be received, in any case whatever, by the court, unless such admission be produced, in writing, and filed, or proved, according to the rules of evidence.

LXXIX. A copy of the indictment, in case of felony, shall be obtained by order of the judge, before whom the cause was brought, before an action of malicious prosecution shall be commenced.

LXXX. No person indicted, shall be tried, unless personally present.

LXXXI. In all cases, wherein no particular rules are herein, before set down, the practice of the court of common pleas, at Westminster, shall be pursued, so far as the same be not repugnant, or contrary, to the above rules, or the laws of this state.

LXXXII. All rules and orders, heretofore made, for regulating the practice of this court, shall be, and they are wholly repealed.

*Trespass to try Title.*

LXXXIII. In all actions of trespass to try title, where the defendant shall set up title to the land in question, or any part thereof, either by possession, or otherwise, he shall be required to plead the same, and, in his plea, shall set out the land so claimed by him, by metes and bounds, with the same precision, as the plaintiff is required to do.

*Concerning Briefs.*

LXXXIV. Whereas doubts have arisen, whether the judges, who presided at the trial before, should be served with a brief, or not; it is hereby ruled, in future, the attorney appealing shall deliver his brief to the judge who presided at the court below, on the first day of the meeting and sitting of the constitutional court, next ensuing each trial below; and shall deliver the briefs for the other judges, at the time that the cause is called.

LXXXV. In every case brought before the constitutional court, where the motion is to arrest the judgment, or reverse a decision made on demurrer, it shall be the duty of the counsel,

submitting the motion, to bring up a copy of the proceeding, to set forth, in the briefs, served on the judges, so much of the record, or pleadings, as may be necessary to a clear understanding of the point, or question, of law, intended to be discussed; and, also, to point out, particularly, the defect, or defects, meant to be insisted on, by way of appeal.

*Concerning Counsel.*

LXXXVI. Not more than two counsel shall be heard on each side, in any case argued in the constitutional court, except in criminal cases, affecting the life of a party.

LXXXVII. Where an issue, out of the court of equity, is directed to be tried in the court of common pleas, the clerk of this court shall give it place on the docket, from the time that application shall be made so to docket it; and not to prefer it to other causes, which shall have been previously inserted on said docket.

LXXXVIII. Where a tenant is sued for land, of which he is in possession, the real owner, or his agent, or attorney, may enter himself on the proceedings, as the defendant in the suit, and shall be entitled to make such defence, as if he had been the original defendant in the action.

LXXXIX. In all actions commenced by venduemasters, under the act of the 17th of March, 1785, against purchasers at their sales, or against venduemasters, under the act of the 15th of December, 1815, who have failed to pay over the proceeds of sales, the plaintiff shall be at liberty to file his declaration, immediately on the return of the writ, or as soon thereafter as he shall think proper. And the clerk shall sign a rule for the defendant to plead, within ten days, upon application to him for that purpose; a copy of which shall be served on the defendant, if he reside within the city of Charleston; if he reside without the said city, posting up the same at the door of the court-house, shall be deemed sufficient service: And if the defendant shall not plead within the time aforesaid, the plaintiff shall be entitled to his judgment by default; and, in all such cases, the presiding judge shall assign a day of trial, at as early a period as may be convenient, without regard to the order in which they stand on the docket.

XC. In every case, in which a new trial has been granted, the costs shall abide the event of the suit; except where there shall be a special direction given respecting the costs.

XCI. Not more than two counsel shall be heard on the same side, of any cause, in the court of common pleas or sessions; nor shall any assistant counsel be heard on the part of any prosecution in the court of sessions: Provided, however, that in capital criminal cases, the court may, in its discretion, allow assistant counsel, ~~one~~ part of the prosecution, on the application of the

attorney-general, or solicitor, or additional counsel on the part of the prisoner, on his application.

**RULES AND ORDERS OF THE COURT OF EQUITY.**

No subpoena, or other process for appearance, shall issue (except in cases to stay waste) till after the bill is filed.

II. All subpoenas *ad respondendum* shall be served personally, or, where the defendant cannot be found, but is within the state, by leaving a true copy of the writ at the dwelling house, or most usual or notorious place of residence or habitation of the person to whom directed.

III. In case the defendant do appear, he shall constitute a solicitor to appear and act for him, so far as a solicitor can or may lawfully act during the continuance of the suit, and file the warrant or order to appear for him in the register's office.

IV. In case the complainant reside out of the state, the defendant may, at any time after the service of the subpoena, obtain an order for the complainant to put in security for costs before the master or commissioner; and if such security be not put in, within thirty days after the service of such order on the complainant's solicitor, the bill shall stand dismissed, unless the master or commissioner, on cause shewn, shall grant further time.

V. Every demurrer shall express the several causes of demurrer, and shall be determined in open court.

VI. Upon any slip or mistake in the bill, the plaintiff, upon motion before the master or commissioner, may, (within thirty days after demurrer put in, and notice thereof,) amend, on payment of costs.

VII. If the demurrer be admitted by the plaintiff to be good, within thirty days after filing it, and he doth pay the defendant, or his solicitor, the costs, then the bill shall be dismissed of course without motion, unless both sides agree to the amendment of the same; but such dismissal is no bar to a new bill to be exhibited by the plaintiff.

VIII. In case the plea, or demurrer, be allowed, the complainant's bill shall be dismissed with costs, and if the defendant's plea, or demurrer, be overruled, the defendant shall pay costs.

IX. If the defendant plead that there is another suit depending for that very cause, or that the cause had been formerly dismissed, and the dismission signed and enrolled in the court of equity, if the plaintiff be not satisfied therewith, the same shall be referred to the master or commissioner in equity; and if it be determined against the plaintiff, he shall pay costs to the defendant; but such reference must be procured by the plaintiff, and a report thereupon within thirty days after filing such plea, otherwise the bill to be dismissed of course.

X. Pleas to the jurisdiction, and pleas of any matter of record, or of matters recorded in this court, need not be upon oath, but pleas in bar, founded on matters in pais, are to be on oath.

XI. Upon demurrer being overruled, the defendant shall pay costs, and put in plea, or answer, within thirty days thereafter : in like manner, if a plea be overruled, the defendant shall pay costs, and put in answer within the same time ; and in like manner, if a defendant, on exception taken, be ordered to make a better answer, he shall pay costs and put in his amended answer within the same time ; otherwise in such cases, an attachment shall be granted, or the bill be taken *pro confesso*, at the election of the complainant ; unless in either case further time be obtained according to the 13th section of the act of assembly, passed in December, 1808.

XII. If the defendant appears by solicitor, upon affidavit made, that such defendant is absent from the state, then a commission shall be granted by the register, or commissioner, directed to two or more persons of credit, to take and certify the answer ; and the form of the oath shall be endorsed on the answer, be subscribed by the defendant, and be certified by the commissioners, as having been subscribed and sworn ; and where the defendant shall reside within the state, and shall have appeared, as aforesaid, he shall be at liberty to swear to his plea or answer, before any judge, or justice of the peace, of this state ; and the form of the oath shall be endorsed on the answer, or plea, be subscribed by the defendant, and be certified, as aforesaid, by such judge, or justice of the peace ; and where it may be necessary that any bill or petition be sworn to, the same may be sworn to and certified in the same manner.

XIII. An answer to a matter charged as a defendant's own fact, must be without saying to his remembrance, or, as he believeth, if said to be done within five years before, unless the court, upon exception taken, shall find special cause to dispense with so positive an answer ; and if he deny the fact, he must traverse or deny it directly, and not by way of negative pregnant.

XIV. In case the answer is imperfect, the complainant, in thirty days after he can procure a copy of the answer, shall put in his exceptions ; otherwise none to be admitted without a particular order of the court, if sitting, or of the master or commissioner in equity, in case the court is not sitting ; but in cases of injunction, or *ne exeat*, the court, on cause shewn, may require exceptions to be filed within a shorter period.

XV. If the defendant shall fail to amend his answer, the exceptions, within fifteen days after filing thereof, and notice to the defendant, shall be heard before the master or commissioner in equity.

XVI. The exceptions taken and specified, to be alone insisted on, and no new exceptions put in.

XVII. If the answer be certified insufficient, the defendant is to pay costs; but the defendant may have liberty to appeal from the report of the master to the court.

XVIII. If the answer be reported good, the plaintiff shall pay the defendant costs.

XIX. The complainant, upon bill filed, and thirty days after subpoena served; and defendant, on plea or answer filed, may obtain a commission to examine witnesses, resident out of the state, on application to the register, or commissioner, giving ten days' notice thereof to the opposite party, and serving him, at the same time, with a copy of the interrogatories to be annexed: and if he does not put in cross interrogatories before the expiration of that time, a commission shall be granted to the party applicant ex parte. There shall be four commissioners, two to be named by each party, unless the opposite party shall not join in the commission; in which case they shall be named ex parte by the applicant, and the commission may be executed by any two, or more, of them.

XX. Witnesses unable to travel from age, sickness, or infirmity, may be examined by commission, if ordered by a judge, or commissioner, on motion and affidavit; the applicant giving the same notice, and taking out his commission in other respects, as prescribed by the preceding rule.

XXI. Commissions, when executed, shall be sealed up by the commissioners, who shall execute the same, and directed to the register, or commissioner of the court, from whence they issue, and shall not be opened but on motion in open court, or by consent of parties in writing.

XXII. If the plaintiff shall fail to appear and prosecute his suit, the bill shall be dismissed, unless the court, on cause shown, shall allow him further time: such dismissal, however, shall not be a plea in bar to a new bill; but a second shall.

XXIII. If the defendant shall not appear and defend the suit, the bill and answer shall be read; if the court, upon hearing, shall find cause to decree for the plaintiff, yet a day shall be given for the defendant to shew cause against the same; but before he shall be admitted thereto, he shall submit to such conditions as the court shall see fit to impose.

XXIV. Decrees may be enrolled at any time not exceeding twelve months, after they shall be pronounced, unless by special order of court.

XXV. No execution, or attachment, for the enforcement of a decree, shall issue until thirty days after the rising of the court, during which such decree was pronounced; and if there be an appeal, then such execution, or attachment, shall not issue until thirty days after the adjournment of the court of appeals, at which

the cause shall be determined; and all exceptions shall be returnable on the first day of the term next after the same shall issue, unless otherwise ordered by the court.

**XXVI.** (For Charleston.) The master or commissioner, in all cases of reference, having prepared his report, shall issue a summons, for the parties to attend him, and peruse the same; and if either party is dissatisfied therewith, he shall, within ten days after the time fixed for attendance, state his exceptions in writing, and take out a summons, to be heard thereon, a copy of which he shall serve on the adverse party, or his solicitor, at least three days before such hearing; and the master or commissioner shall thereon finally determine and report.

**XXVII.** (For the country.) On the circuit, notice of all reports, made in vacation, shall be served on the parties, or their solicitors, on, or before, the first day of the next term; and the party dissatisfied therewith shall file his exceptions, and give notice thereof, on, or before, the second day of the said term: notice of all reports made in term time, shall be immediately served on the parties, or their solicitors; and the party dissatisfied therewith shall, within one day after such notice, file his exceptions. In all cases, where such exceptions are filed, and notice given, the commissioners shall immediately proceed to hear, and thereon finally determine, unless he shall allow further time.

**XXVIII.** An injunction to stay proceedings at law, must be served either on the party himself, his counsel, or solicitor, as the cause requires, and afterwards filed in the office of the clerk of the court of common pleas.

**XXIX.** All causes shall be docketed ten days before the meeting of the court, and no cause shall be docketed, until the pleadings are complete and filed.

**XXX.** (For Charleston.) Briefs shall be served with the registers of the respective circuit courts, and courts of appeal, three days before the meeting of the courts; and no cause will be heard unless briefs are so delivered.

**XXXI.** (For the country.) On the circuit, all briefs shall be served, on, or before, the meeting of the court.

**XXXII.** A decree being fully performed, the party satisfied, shall, on application made to him, enter satisfaction, in a book, to be kept for that purpose, by the register, or commissioner, and on the enrolled decree, if the same be enrolled; and the register, or commissioner, shall grant certificates of satisfaction, on application therefor.

**XXXIII.** When the bill, or petition, is dismissed, the costs shall be paid by the complainant; when sustained, by the defendant, unless otherwise ordered by the court; the party, in either case, entitled thereto, may have an attachment, or execution, for enforcing payment thereof.

## JUDICATURE.

**XXXIV.** Sundays are to be included in all the calculations of time, under the preceding rules.

**XXXV.** (For Charleston.) The bill being taken *pro confesso*, the order therefor can only be set aside when the defendant shall give ten days' written notice (in Charleston) prior to the ensuing term, of his intention to apply for the same, on the first day of such term, and shall have previously filed, or, on making the application, shall produce a full and explicit answer, or plea, with a brief for the court; and shall docket the cause for hearing, at the said term, and submit to any further conditions the court may impose.

If the complainant be dissatisfied with the answer, he may, within ten days, tender exceptions; and if, on reference thereof, the answer shall be adjudged insufficient, the bill shall be absolutely ordered to be taken *pro confesso*. But in making a final decree, where a bill has been taken *pro confesso*, the court will require such proofs, as shall satisfy it of the justice of the complainant's demand; and the defendant may be heard touching the merits so disclosed, and may take advantage of any matter, which would have been good cause of demurrer, but not of such as ought to have been presented by plea, or answer.

**XXXVI.** (For the country.) The bill being taken *pro confesso*, the order therefor can be set aside only, where the defendant shall apply for the same, on the first day of the meeting of the court, and shall have previously filed, or, on making such application, shall produce a full and explicit answer or plea, with a brief for the court, and shall docket the cause for hearing at such court, and submit to any further conditions the court may impose.

If the complainant be dissatisfied with such answer, he shall forthwith file exceptions; and if, on reference thereof, the answer shall be adjudged insufficient, the bill shall be absolutely ordered to be taken *pro confesso*, as to the points not satisfactorily answered, unless otherwise ordered by the court; but in making a final decree, where a bill has been taken *pro confesso*, the court will require such proofs as shall satisfy it of the justice of the complainant's demand; and the defendant may be heard touching the merits so disclosed, and may take advantage of any matter, which would have been good cause of demurrer, but not of such as ought to have been presented by plea or answer.

**XXXVII.** The registers and commissioners of the respective courts shall keep books, in which they shall cause to be transcribed, all reports made to the court, as soon as the same shall be confirmed.

**XXXVIII.** No cause shall be continued on the docket, for a longer time, or on other terms, than those prescribed by law.

## JUSTICES OF THE PEACE.

**XXXIX.** Gowns and black coats shall be the habit of and no member thereof shall be permitted to address them unless in such habit.

## JUSTICES OF THE PEACE.

**JUSTICES** of the quorum, and of the peace, shall be elected or appointed, as heretofore, by a joint resolution of the senate and house of representatives.—(d.)

**II.** All appointments of justices of the quorum and of the peace, shall continue for four years, and from thence for days after the end of the session of the legislature, at, or next after, the time at which such appointments shall be made.—(g.)

**III.** Every justice of the quorum, and of the peace, shall take the several oaths of office, required by the constitution and laws of this state, before the clerk of the court of sessions and common pleas, for the district in which such justice shall be appointed, within ninety days after such appointment, or at a time previous to the adjournment of the first court of common pleas, to be held in the district for which such appointment is made: And if any person appointed a justice of the quorum of the peace, shall fail to qualify according to law, he shall not be permitted to act under that appointment.—(h.)

**IV.** Every justice of the peace, and of the quorum, before he enters upon the duties of his office, take the following oath, or affirmation, to be administered to him by the clerk of the court of sessions and common pleas for the district in which such justice shall be appointed; that is to say: "I, swear, (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the office, to which I have been appointed, and will, to the best of my abilities, discharge the duties thereof, and preserve, protect, and defend the constitution of this state, and of the United States. (p) At further solemnly swear, (or affirm) that I will well and demean myself in the office of justice of the peace, (or quorum) and will conduct myself with impartiality, according to the best of my skill and knowledge, and the laws, usages and customs, of the state of South Carolina; that I will not counsel to any person in any cause depending before me, according to the directions of the several acts of the

(d)—1799, 2d Faust, p. 262. (g)—Ibid, p. 259. (h)—Sess. Acts 16. See also Sess. Acts, 1820, p. 6, and 2d Faust, p. 262. (p)—Code of South Carolina, article 4.

ral assembly of the state, truly account for, and pay, or cause to be paid, into the public treasury, all the fines and forfeitures, which shall be recovered before me, and come into my hands; that I will not spare any one, for any gift, or other cause, nor take any fee, or reward, for doing the duty of a justice of the peace, (or of the quorum) but the fees and allowances established by act of assembly. I will not direct, or cause to be directed, any warrant by me made, to either of the parties themselves, but to the constable of the parish, or district, or other indifferent person, to execute the same; and in all things, will well and truly do and execute the office of a justice of the peace, without fear, favor, or affection."—(m.)

V. Every person who shall take upon himself to act as a magistrate, in this state, without being duly qualified, according to law, shall, for every such offence, be fined in the sum of six hundred and twelve dollars, and thirty cents, to be recovered by bill, or plaint, in any court of record in this state, one half to be paid to him, or them, who shall inform and sue for the same, and the other half into the public treasury, for the use of the state.—(n.)

VI. Where any road, or navigable river, is the dividing line between two districts, the justices of each district, that shall be so divided, shall exercise equal jurisdiction over the said road, or river; and the process and orders of each of the said justices which shall be first executed thereupon, shall have jurisdiction, sole and exclusive, as to such other district, and the subject matter of such process, or order.—(o.)

VII. All justices of the peace and of the quorum, shall have jurisdiction in all cases of debt, or other demand arising from contract, as far as twenty dollars: (p) and when the judgment of any justice of the peace shall be for any sum less than two dollars and fourteen cents, such justice shall not take, or receive, any fee, or fees, of office, or costs of suit, on such judgment: (q) Provided always, that if either of the parties shall conceive him, her, or themselves, injured or aggrieved, by the judgment, decree, or sentence, of any justice of the peace, or quorum, where the debt, or demand, is for a sum above six dollars, such person, or persons, may have an appeal to the first court that shall be holden for the district, wherein such judgment, decree, or sentence, is given or awarded, upon giving sufficient security to prosecute such appeal to effect, or, on failure thereof, to satisfy the costs and condemnation of the said court; and the said court shall hear and determine the said appeal according to the justice of the case, and award execution against the person, or persons, cast therein: (r) But no action of tre-

(m)—1778, P. L. p. 301, and Sess. Acts 1819, p. 16. (n)—1778, P. L. p. 301. (o)—1785, P. L. p. 361. (p)—1799, 2d Faust, p. 318. (q)—1791, 1st Faust, p. 51. (r)—1799, 2d Faust, p. 318.

pass, trover, detinue, slander, or trespass, in assault and battery, or other action, arising merely from tort, and not from contract, shall hereafter be cognizable by any justice of the peace in this state.—(a.)

VIII. In all warrants to be issued by any justice of the peace, for any debt, or demand, whatsoever, the day of the month, the name, or names, of the plaintiff, or plaintiffs, and the nature and foundation of his, her, or their, demand, shall be plainly expressed and specified, and the defendant summoned to appear before the same, or the next justice of the peace, at such time, and place, as the justice issuing such warrant shall appoint; and every such warrant shall be under the hand and seal of the justice issuing the same. And after both parties, with their witnesses, if any are required, before him, or them, are come, and appear, such justice, or justices, shall proceed to examine, hear, try, judge, and determine, such demand; and in case witnesses are not, or cannot be, produced, to prove the debt, or demand, which shall be brought before him, or them, as aforesaid, the said justice, or justices, shall have power to take the oath, or oaths, of the parties, touching all the matters in dispute; which oath shall be first proposed, or given, to the defendant, or defendants, and upon his, or their, refusal to take such oath, and answer such questions, as shall be demanded by the said justice, or justices, then he, or they, shall examine the plaintiff, or plaintiffs, on his, or their, oaths, and judge and determine the matter in dispute, according to justice and equity; and, after determination, cause execution to be levied upon the goods and chattels of the defendant, or defendants, to the full value of the debt due, with costs and charges.—(b.)

LX. Every justice of the peace and quorum of this state, shall have authority to issue a summons directed to any person, or persons, whose testimony may be necessary for the investigation of any cause, which shall be depending before him, or them; which summons shall be signed by the justice, or justices, issuing the same; and all constables shall duly execute all such summonses and other process whatsoever, to them, or either of them, directed by any justice, or justices, of this state. And every person, who shall, at any time, be duly summoned to attend and give evidence, before any justice, relative to matters cognizable by him, or them, and shall refuse, or neglect, so to do, such person shall be subject to the same penalties, and liable to be proceeded against in the same manner, by process, from such justice, or justices, signed as aforesaid, as if such person had refused to give evidence when thereto lawfully required in any district court of this state: (c) And every witness refusing;

(a)—1791, 1st Faust, p. 52. (b)—1746, P. L. p. 213—See also sect. v.

(c)—1805, Seq. Acta, p. 26.

or neglecting, to attend before a justice of the peace when duly summoned, or refusing, to give evidence, when present, shall moreover be liable to the action of the party aggrieved by such refusal, or neglect, and shall make compensation in damages for the injury so sustained.—(a.)

X. The oath of the plaintiff, if the magistrate has reason to believe the same to be true, shall be deemed sufficient to prove the plaintiff's debt, or demand; but in case the defendant shall offer to deny the same, on oath, then the plaintiff shall be obliged to produce some person to prove the said debt or demand, unless the same be for a book debt, in which case, the oath of the plaintiff producing and swearing to his books, shall be allowed to be evidence, (p) within one year after the delivery of the wares, work done, &c. on account of which the action shall have been brought: (q) And in case of the non-appearance of the defendant, upon warrant duly served, and so returned by the constable, and affidavit thereof made, such justice shall, upon due proof made of the debt, proceed to pronounce judgment by default, against the defendant, and award execution to be levied as aforesaid.—(p.)

XI. If the plaintiff shall become nonsuited, or judgment be given against him, the justice shall assess, to the defendant, costs against such plaintiff, to be levied by execution.—(c.)

XII. All constables, to whom any original warrant, subpoena, or summons for witnesses, or execution, shall be directed, by one, or more, justice of the peace, shall pay due obedience in the execution thereof.—(d.)

XIII. Every constable shall cause all goods and chattels by him taken in execution, to be kept in safe custody five days after they are so taken, and shall immediately advertise the sale thereof, at some public place in the neighborhood, to the end, that if the defendant, before the day appointed for the sale, shall pay the money ordered to be levied, the goods may be re-delivered to him; but, upon his further delay, or refusal, the said constable shall expose the goods to sale, at public auction, and apply the money arising therefrom to the discharge of the judgment and execution: and the overplus, if any, shall be returned to the defendant.—(g.)

XIV. The treasurers of the upper and lower divisions, of the treasury, the clerks of the several courts of record in this state, the ordinaries, registers of mesne conveyances, and notaries public, shall be, *ex-officio*, justices of the quorum, so far as relates to the duties of their respective offices; (o) and the said clerks and notaries, shall also be justices of the quorum, in all cases, except for the trial of small and mean causes.—(h.)

(a)—1794, 1st Faust, p. 395. (p)—1746, P. L. p. 214. (q)—1712, P. L. p. 74. (c)—1746, P. L. p. 214. (d)—*Ibid.*, and *Seas. Acts.* 1805, p. 26. (g)—1746, P. L. p. 213. (o)—1804, 2d Faust, p. 550. (b)—1810, *Seas. Acts.*, p. 52.

XV. The justice, or justices, before whom any person shall be brought, for manslaughter, or felony, or for suspicion thereof, before he, or they, shall commit such prisoner to gaol, shall take the examination of such prisoner, and information of those that brought him, of the facts and circumstances thereof; and the same, or as much thereof as shall be material to prove the felony, shall put in writing within two days after such examination; and the same shall certify in such manner and form, and at such time, as they ought to do if such prisoner should be bailed; and the said justice, or justices, shall have authority to bind by recognizance, or obligation, all such as may declare any thing material to prove such manslaughter, or felony, against such prisoner, to appear at the court of sessions next to be holden for the district where the trial of the said offence shall be, then, and there, to give evidence against the party; which recognizances, or obligations, the said justice or justices, shall return to the clerk of the said court, on, or before, the sitting thereof.—(m.)

XVI. It shall not be lawful for any person exercising the office of justice of the peace within this state, to keep a tavern, or to retail spirituous liquors; nor shall any license for retailing spirituous liquors be granted to any person exercising the office of justice of the peace, or to any person in his house, or family, or for his emolument; and if any person shall offend against the true intent and meaning hereof, he shall forfeit and pay the sum of two hundred and fourteen dollars and thirty cents, to any person who will inform, or sue, for the same, and be for ever thereafter incapable of serving in the office of a justice of the peace in this state.—(n.)

XVII. All justices of the peace, before whom recognizances of witnesses, defendants, or prosecutors, for their respective appearances, at any of the courts of this state, shall be taken, or before whom any information, or other paper returnable to the same, shall be made, shall lodge the said recognizances, informations, or other papers, in the respective clerk's offices of the courts, to which they are returnable, on, or before, the first day appointed for the meeting of the said courts, respectively, on pain of forfeiting forty-two dollars and eighty five cents, for every neglect, to be recovered by bill, or plaint, in the said courts, at the suit of the state, and for its use; unless the person so offending, shall give into the court, on oath, a good and sufficient excuse for such neglect.—(o.)

XVIII. If any justice of the peace, or of the quorum, upon prosecution commenced against him, in any court of justice having competent jurisdiction, shall be convicted of malpractice in office, his office shall, of course, be vacated, and he shall be

(m)—1712, P. L. p. 59. (n)—1791, 1st Faust, p. 53. (o)—Ibid. p. 172. .

forever incapable of holding, or exercising, the office of justice of the quorum, or of the peace, in this state.—(a.)

XIX. When any process shall be sued forth before any justice of the peace, in behalf of any person residing out of this state, against any person inhabiting here, the person suing forth such process, shall, at any time, when required, upon motion, be ruled to give security, to the defendant, for all costs to accrue therein; and if such person shall fail to give such security, being thereto required, the suit shall be dismissed, and the defendant shall have judgment, and may sue forth the execution against such person, for such costs.—(b.)

XX. Each clerk of the court of sessions and common pleas, shall, on, or before, the first day of November, in every year, record, in his office, a true list of the justices, who shall have qualified before him; and shall, within the said time, transmit a true copy thereof, to the secretary of state, who shall make a record thereof.—(c.)

### LANDS.

VACANT land in this state, shall be granted to any citizen applying for the same, on payment of the fees of office.—(d.)

II. The commissioners of locations, in their respective districts, shall take and receive the original entry of all vacant lands lying and being therein; and, in all cases, where warrants of survey shall be demanded, they shall issue the same, directed to some deputy surveyor, authorizing and requiring him, within two months from the date thereof, to lay off and locate the lands directed to be surveyed; which warrant, when executed, together with a true and correct plat of the survey, shall be received by the said commissioners, respectively, who shall make a fair record of the same; and, within three months after such return, shall transmit the original plat to the office of the surveyor-general of the state, for the time being, where the same shall be recorded.—(e.)

III. Each of the said commissioners of location, shall enter into bond, for the faithful discharge of his duty, in the sum of one thousand dollars, with two sureties in the sum of five hundred dollars each, (f) payable to the treasurers of this state for the time being, in trust, and to, and for, the use of the state; and shall also, at the same time, before some magistrate, take and

(a)—1799, 2d Faust, p. 261. (b)—1785, P. L. p. 381. (c)—1819, Sess. Acts, p. 16.—See Post, 269. (d)—1791, 1st Faust, p. 61. (e)—1784, P. L. p. 334. (f)—1810, Sess. Acts, p. 28.

subscribe the following oath of office, *ts-wit*: "I, do solemnly swear (or affirm) that I will well and faithfully execute the office of commissioner of locations for the district of [redacted] without giving a preference to any person, through favor, fear, or reward, according to the best of my skill and ability: So help me God."—(m.)

IV. On all creeks, or rivers, navigable for shipping or boats, whereon any vacant lands shall lie, the deputy surveyors shall lay off the same by measuring four chains back from such river or creek, for every one fronting up, and bounded by, the same; and all surveys not made and regulated by this rule, and grants that may be obtained thereupon, shall be null and void.—(m.)

V. If no grant shall be obtained for land within six months after the return of a plat of it into the surveyor-general's office, the surveyor-general shall certify the plat, and the governor shall sign a grant for the said land, to any person who will apply for the same, and comply with the terms which the person, for whom the said land was surveyed, should have fulfilled, previous to obtaining a grant for such land.—(n.)

VI. When any survey shall be returned to the location office, from whence the warrant of survey issued, and the person obtaining such survey shall not, within six months from the date thereof, pay the fees and pass the same through the said office, the commissioners of locations, respectively, shall certify such survey for any person applying for the same, in the same manner as is done in the surveyor-general's office.—(a.)

VII. Any grant obtained for land within six months from the time of its being surveyed, except by the person for whom the survey was made, shall be, *ipso facto*, null and void.—(b.)

VIII. All grants obtained for lands lying within the lines, buttins, and boundings, of former plats and grants, which are commonly known by the name of surplus lands, except where the grant of such surplus land had been made to the proprietors of such granted land, shall be null and void.—(c.)

IX. An actual, peaceable, and quiet possession of any lands for five years previous to the fourth day of July, one thousand seven hundred and seventy-six, shall be deemed a good and sufficient title; and any grant obtained since that time, for the same land, shall be null and void.—(c.)

X. The surveyor-general of this state, on the return of the entry and plat of survey to his office, from the office of commissioner of locations, shall make out a plat of the lands surveyed and recorded, and transmit the same certified to the office of the secretary of state, who shall cause a grant to be prepared for the same, [and the small seal (q) affixed thereto;] and shall,

(m)—1784, P. L. p. 335. (n)—1785, P. L. p. 393. (a)—1786, P. L. p. 413.  
(b)—1785, P. L. p. 400. (c)—1787, P. L. p. 428. (q)—1805, D. C. 14 Sept.,  
Acts p. 51.

within three months thereafter, cause a fair record of all such grants to be made and kept in his said office, with alphabetical indexes: and on the first Monday in every month, (o) the said secretary of state shall lay before his excellency the governor for the time being, all such grants by him prepared, as aforesaid, who shall sign the same, and thereupon re-deliver them to the secretary of state, to be delivered to the respective grantees, or to their order: Provided, that in all cases, previous to the signing of the said grants, where there shall appear to be any fraud or collusion in the progress of the said entry, warrant and survey, any person interested therein shall be at liberty to enter a caveat against the issuing of such grant: (a)—And any one or more of the judges of the court of common pleas, in their respective districts, shall have full power and authority to cause all parties to appear before them, and, without delay, in a summary manner, decide in such cases, as to justice and equity shall appertain.—(d.)

XI. The surveyor-general shall enter into bond for the faithful discharge of his duty, with two good and sufficient sureties, in the sum of forty-two thousand eight hundred and sixty dollars, payable in the same manner, and shall take and subscribe the same oath, or affirmation, before the secretary of state, in the presence of the governor, as is hereinbefore prescribed to be entered into and taken by the several commissioners of locations; which bond and oath, or affirmation, shall be forthwith recorded in the secretary's office.—(g.)

XII. The surveyor-general may appoint as many deputy surveyors, as he shall think proper in each district; [and such deputy surveyors shall be confined to locate warrants of survey in their respective districts for which they may be appointed, and in no other;] (q) for whose conduct in office the said surveyor-general shall be responsible, both to the state and individuals.—(g.)

XIII. The said deputy surveyors of the respective districts, shall take the same oath or affirmation of office, on their appointment, and in the same manner, as is hereinbefore prescribed to be taken by commissioners of locations, before they shall be qualified to locate any warrant of survey, under the penalty of being forever disabled to act in the said office; and shall also, within three calendar months from the date and delivery of all warrants of survey to them directed, well and faithfully locate and survey the same, and return a fair and correct plat thereof to the office of the commissioner of locations, from whence the same had issued; and the said deputy surveyors shall administer the following oath to the chain carriers, to-wit: "I, do solemnly swear (or affirm) that I will well

(o)—P. L. p. 393. (a)—1784, P. L. p. 335. (d)—Ibid.—See also 22 Faust, p. 166. (g)—1784, R. L. p. 335. (q)—1785, P. L. p. 393.

## LICENSES.

267

"and truly execute the employment of chain carrier, without favor or affection."—(g.)

XIV. The surveyor-general shall not, during the time he is in office, under any pretence whatever, hold any other place, or office, of emoluments, whatsoever, under the authority of this state, or of the United States.—(h.)

XV. The surveyor-general shall keep his office open from nine o'clock in the forenoon, to three o'clock, P. M. every day, except Christmas day, Sundays, and the 4th day of July.—(m.)

XVI. The commissioners of locations shall keep their offices at, or near, the centre of their respective districts, and shall give regular attendance every day, Sundays excepted.—(n.)

XVII. It shall not be lawful for the surveyor-general, secretary of state, commissioners of locations, or clerks in the surveyor-general's, or secretary's offices, to take up any elapsed grant; or to run out either directly, or indirectly, in his, her, or their own name, or names, or in the name or names of any other person or persons, for his, or their, use, any lands now vacant within this state, without being subject to the penalty of twenty-one thousand four hundred and thirty dollars, to be recovered in any court of record in this state; one half to the use of the state, and the other half to the informer, or person suing for the same; And he, and they, shall also be discharged from their respective offices, and rendered for ever incapable of holding any office of trust or emolument in this state.—(n.)

XVIII. All houses, lands, negroes, and other hereditaments and real estates, situate or being, within this state, belonging to any person indebted, shall be liable to, and chargeable with, all just debts, duties, and demands, of whatsoever kind or nature, owing by such person to the state, or to any individual, and shall be assets for the satisfaction thereof; and shall be subject to the like remedies, proceedings, and process, in any court of law, or equity, for seizing, extending, selling or disposing of any such houses, lands, negroes and other hereditaments and real estates, towards the satisfaction of such debts, duties, and demands, &c. in like manner, as personal estates are seized, extended, sold, or disposed of for the satisfaction of debts.—(q.)

## CENSES TO TAVERN KEEPERS, AND OTHERS.

The sole and exclusive power of granting and issuing licenses to retailers of spirituous liquors, tavern keepers, and keep-

(g)—1784, P. L. p. 335. (h)—Ibid, p. 336. (m)—1791, 1st Faust, p. 21.

(n)—P. L. p. 336. (o)—1787, P. L. p. 427. (q)—1792, P. L. p. 250.

## LICENSES.

ers of billiard-tables, shall be vested in the commissioners of the high roads and bridges, or a majority of them, in their respective districts and parishes throughout the state; and the said commissioners shall, at any stated meeting, hear applications for such licenses; and shall reject or grant the same for one year, as to them shall seem meet and proper. And every person, who shall obtain a license to keep tavern, shall give bond with two sufficient sureties, in the sum of four hundred and twenty-eight dollars and sixty cents, payable to the said commissioners, for the use of the district, that such person shall keep clean and wholesome meat, drink, and lodging for travellers, and the usual provender for horses; and all licensed retailers, who do not keep also taverns and entertainment for travellers, shall pay fifteen dollars each, two of which to be retained by the clerk. (a) for their licenses; and the person licensed, shall not retail spirituous liquors in any quantity less than a quart; except in the districts of Charleston, Beaufort, Colleton, and Georgetown, in which districts such retailers shall pay for their licenses twenty dollars each, and be subject to the restrictions aforesaid; and every retailer of spirituous liquors, to whom such license is granted, shall, previous to receiving the same, give bond and security according to law, to the chairman of the board of commissioners, or other person by them authorized.—(d.)

II. It shall be lawful for the secretaries, or clerks, of the several boards of commissioners of the roads, bridges and ferries, of the several districts and parishes in this state, to grant a permit, or license, under his hand and seal, to any person, or persons, to keep a tavern, or retail spirits, during the recess between the sittings of their respective boards; which permit, or licence, shall remain in force until the next meetings of the said boards respectively: Provided however, that the person, or persons, applying for such permit or license, shall give bond and security in the penalty of four hundred dollars, payable to the said board of commissioners, that he will, at the next regular meeting of the board of commissioners of the parish or district, where the application shall be made, make application to the said board for a license for one year, to take date from the time of his first application; and shall also, at the time of such application, pay to the said clerk, or secretary, a sum, that shall be equal to the rate of a license for the year, for the time the said permit shall be in force.—(e)

III. Every person applying for a license to retail spirituous liquors, who shall also keep tavern, shall pay, on receiving such license, the sum of eight dollars, to the chairman of the board, or person authorized thereby, together with two dollars

(a)—1817, Sess. Acts, p. 80. (d)—1801, 2d Faust, p. 398-9. (e)—1815, Sess. Acts, p. 31.

\*fee for issuing the said license, and taking bond as aforesaid.—(d.)

IV. The sole power of receiving the monies to be paid for licenses by tavern keepers, retailers of spirituous liquors, and keepers of billiard tables, shall be vested in the commissioners of the high roads and bridges, and by them applied to the repairs of the roads and bridges in their respective districts and parishes.—(g.)

V. Any person, who shall retail spirituous liquors, or keep a tavern, without a license, shall forfeit and pay the sum of one hundred dollars, to be recovered in any district court of the state.—(g.)

VI. Where there are two or more divisions of the commissioners of the roads in any parish, or district, such divisions shall have full power to grant tavern licenses within their respective limits.—(h.)

VII. Every person applying for a license to keep a billiard table, shall, on receiving such license, pay the sum of fifty dollars to the chairman of the board of commissioners, or other person thereby authorized, together with a fee of two dollars for the issuing of the said license; and every person, who shall keep a billiard table without such license, shall forfeit and pay the sum of one hundred dollars, to be recovered in any district court in this state; the forfeiture in all cases to be thus disposed of, viz: one half to the informer, and the other half to the boards of commissioners in their respective districts or parishes, to be applied by them to the repairs of roads and bridges, or to the maintenance of the poor in such district as may not require the application of the money to the repairs of the roads and bridges: Provided that nothing herein contained shall be construed to lessen the powers granted by law, to any incorporated town; and provided also, that no person shall be prevented from selling or retailing spirituous liquors, not less than one quart, distilled on his own plantation, of the growth and produce of this state, and to be carried away from the said plantation.—(m.)

VIII. No person shall retail, sell, or otherwise dispose of, any spirituous or other intoxicating liquors within one mile of any church, meeting-house, or other place set apart for the worship of Almighty God, on the day of worship, under the penalty of fifty dollars, to be recovered by action of debt, or indictment, in any court having competent jurisdiction; the said penalty to be applied to the use of the poor of the parish, or district, in which such offence shall be committed: Provided nevertheless, that this section shall not interfere with the rights of any person residing within one mile of such place of worship, who

(d)—1801, 2d Faust, p. 398—9. (g)—Ibid, p. 400. (h)—1810, Sess. acts, p. 49. (m)—1801, 2d Faust, p. 401.

**LIMITATIONS OF ACTIONS.**

may be regularly licensed to retail such liquors, so as to prevent him from retailing the same at his own house.—(n.)

**X.** If any retailer of strong liquors shall give, sell, or deliver to any slave, any beer, ale, cyder, wine, rum, brandy, or other strong or spirituous liquors whatsoever, without the consent of the owner, overseer, or manager of such slave, he shall forfeit, for the first offence, the sum of three dollars, and for the second offence, six dollars, and be bound in a recognizance in the sum of sixty dollars, with one or more sureties, before any judge of the general sessions, not to offend in the like kind, and to be of good behavior for one year; and for want of such security, such offender shall be committed to prison for any time not exceeding three months.—(o.)

**X.** If any tavern keeper, or retailer of spirituous liquors, shall permit any person living in the same town, village, or hamlet, where such tavern or retail shop shall be, to remain drinking and tippling, or getting drunk in his, or her, house or shop, in an idle and disorderly manner, such tavern keeper or retailer of spirituous liquors, shall, for every such offence, forfeit and pay the sum of two dollars and fifteen cents, to the use of the poor of the parish, or district, where the offence is committed; to be recovered before any justice of the peace of the same parish or district, and levied by warrant of distress; and in default of a sufficient distress, or payment, the offender shall be committed to the common gaol, there to remain till the said forfeiture be fully paid.—(a.)

**LIMITATIONS OF ACTIONS.**

If any person, or persons, to whom any right or title to lands, tenements, or hereditaments, within this state, shall descend or come, do not prosecute the same within five years after such right or title accrued, he, or they, and all claiming under him, or them, shall be forever barred from recovering the same; excepting every person without the limits of this state, feme covert, and persons imprisoned, who shall be allowed seven years to prosecute their respective claims to such lands, tenements, or hereditaments, after any right or title accrued: [and excepting also every person under the age of twenty-one years, who shall be allowed to prosecute his, or her, claim, at any time within five years after they come to age;] (o); and all claims, to be made as aforesaid, to any lands or tenements in this state, to

(n)---1809, Sess. acts, p. 49. (o)---1788, P. L. p. 455. (a)---1712, P. L. Appx. p. 25.

## LIMITATIONS OF ACTIONS.

271

be effectual, shall be made by action at law duly entered in the court of common pleas, according to the practice and rules of the said court; and the judges of the said court shall not allow or admit any such claim, unless the same be made by action on record, as aforesaid.—(b.)

II. All actions of trespass, *quare clausum fregit*, all actions of trespass, *détinue*, actions *sur trover*, and *replevin*, for the taking away of goods and chattels, all actions of *account*, and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants, all actions of debt grounded upon any contract without specialty, all actions of debt for arrearages of rent reserved by indenture, all actions of covenant, all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued for brought, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say; the said action upon the case, except for slander, the said action for accounts, the said actions of trespass, debt, *détinue*, and *replevin* for goods and chattels, the said action of covenant, and the said action of *quare clausum fregit*, within four years next after the cause of such action accrued, and not after; and the said action of trespass in assault and battery, wounding, imprisonment, or any of them, within one year next after the cause of such action, and not after; and the said action upon the case for slander within six months next after the words spoken, and not after: Provided nevertheless, that if, in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed for error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, in every such case, the party plaintiff, his heirs, executors or administrators, as the case may require, shall be at liberty to commence a new action or suit at any time within one year after such judgment reversed, or given against the said plaintiff, and not after: (b) And provided also, that if any person entitled to such action of trespass, *détinue*, *trover*, *replevin*, *account*, debt, covenant, trespass in assault and battery, or imprisonment, or upon the case for words, at the time of any such cause of action accrued, shall be without the limits of this state, *seme covert*, or imprisoned, such person shall be at liberty to bring his, or her, action, at any time within five years after such cause of action accrued; but at no time after: [and that any person under the age of twenty-one years shall be allowed to bring his, or her, action, within four years (p) after coming to lawful age: (c) And provided further, that if any person, against whom there shall be any cause of action of trespass, *détinue*, *trover*, *replevin*, *account*, upon

(b)—1712, P. L. p. 101. (b)—1712, P. L. p. 102. (p)—1788, P. L. p. 225. (c)—1712, P. L. p. 102.

the case, or debt grounded on any lending, or contract, without specialty, or for arrearages of rent, or trespass, in assault and battery, or imprisonment, be, at the time of such cause of action given, or accrued, without the jurisdiction of this state, then the person entitled to such suit, or action, shall be at liberty to bring the same against such person, after his, or her, return to this state, provided it be done within such times as herein before respectively limited, for the bringing of the said actions.—(a.)

III. In every case where any penalty, fine, or forfeiture, shall be imposed by the legislature of this state, and the time of prosecuting the offender not thereby provided, no action, or prosecution, shall be had, or maintained, against such offender, unless the same be commenced within six months after the commission of the offence.—(g.)

IV. In all bills of sale, to be made of any negroes, goods, or chattels, whatsoever, by way of mortgage, with right of redemption, upon performance of the proviso, in the said bill of sale, where such negroes, goods, or chattels, are actually delivered unto the person, to whom such bill of sale is made, and are in his, or her, actual possession, (and not delivered in form of law only,) and shall continue in the same for the space of two years after breach of the proviso, in the said bill of sale, without redemption thereof; the said negroes, goods, or chattels, so sold, delivered and possessed, as aforesaid, though with right of equity of redemption, shall be absolutely vested in the mortgagee, who shall hold the same as his, or her, own proper goods, and chattels forever, except such persons having the right of redemption as may be without the state, and females covert, whose equity of redemption shall be saved: Provided they prosecute the same within three years after breach of the proviso, in such bill of sale.—(m.)

V. Any person having a right, or claim, to any lands, or tenements, in this state, or any action, claim, or demand, whatsoever, herein before limited, except suit to be prosecuted against executors, or administrators, or for the redeeming of any negroes, goods, or chattels, mortgaged as aforesaid, being, at the time of such right, claim, or cause of action accrued, *non componens mentis*, shall, notwithstanding the said limitations, have liberty to make his, or her, claim, except as before excepted, at any time within one year after coming of sound mind, if resident within the state, and if out of the state, two years.—(n.)

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(a)—P. L. p. 96. (g)—1748, *Ibid*, p. 217. (m)—1712, *Ibid*, p. 103. (n)—*Ibid*, p. 104. When the statute of limitations has once begun to run, no supervening disability will suspend its operation—See 2 *Mill*, 296, Administrators of Adamson, *vs.* Smith; and 1 *Nott & M'Cord*, 296; *Fayouxs vs. Prather*. A promissory note given to the treasurer of the state is not exempt from the operation of the statute of limitations; much less can the treasurer of the commissioners of the roads claim this high prerogative. If subordinate agents of the state undertake to give indulgence to persons indebted to them, in behalf of

## LOTTERIES.

EVERY person, who shall publicly, or privately, erect, set up or expose to be played, drawn, or thrown at, any lottery, under the denomination of sales of houses, lands, plate, jewels, goods wares, merchandize, or other things, or for money, or by an undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, cards, lots, balls, numbers, figures, or tickets; or who shall deliver out, or cause to be delivered out tickets, numbers, and figures, to any person advancing money to entitle him, or her, to a share of the money so advanced, or to any houses, lands, plate, jewels, merchandize, or other thing whatsoever, to be determined by way of lottery, to be draw out of this state, or by the chances of prizes in any other lottery; or shall sell, or dispose of, or cause to be sold, or dispose of, any tickets, numbers, or receipts, in any foreign, or other lottery; or who shall make, write, print, or publish, or cause to be written, or published, any scheme, or proposal, for any of the purposes aforesaid, and shall be convicted of any of the said offences, on any indictment for the same, at the court of general sessions, shall forfeit the sum of eight hundred and fifty dollars; one third part thereof to go to the state, one third paid to the informer, and the residue to the poor of the district where the offence shall be committed; and the offender shall moreover, be committed by the said court, to the common gaol there to remain, without bail or mainprize, for the space of twelve months, and until the said sum of eight hundred and fifty dollars shall be fully paid and satisfied.—(a.)

II. Every person, who shall be an adventurer in, or shall pay any money, or other consideration, or in any way contribute unto, or upon account of any such sales, or lotteries, sha-

the public, they must do it on their own responsibility: Jameson, Treasurer, v. Executors of Carmichael, 2 *Mill*, p. 206. After an account has been barred by the statute, the entry of a credit of recent date, which is disowned by the debtor, will not, without further proof, take it out of the statute.—*Ibid.* 178: Executors of Taylor vs. M'Donald. A bare acknowledgment of a subsisting debt is sufficient to take a case out of the statute of limitations. Burden v. McElheny: 2 *Nott & McCord*, p. 50. A. and B. having unsettled account B. stipulates, that, if the balance should be against him, it should not be barred by the limitation act: this stipulation arrests the operation of the act, but will itself, be binding only for four years: 1 *Mill*, 168, Executors of Lance vs. Parker. Where a promise is made indefinitely, without giving any time for the payment, the statute of limitations begins to run instantly. And when a promise is, to pay on the event of a contingency, which depends wholly on the promiser, it also commences on the date of the promise; because he can defeat it at his will, or it might be defeated by accident: 2 *Mill*, 442, Administrators of M'Donald vs. executors of Goodwin. Casual trespasses do not constitute such a possession as will bar a plaintiff's right to recover; but there must be actual occupancy, and substantial inclosure: Baily vs. Irby, 2 *Nott & McCord*, p. 343. (a)—1762, P. L. p. 256.

## 274 MANDAMUS, AND QUO WARRANTO.

forfeit, for every such offence, the sum of eighty-five dollars, to be recovered with costs of suit, by action of debt, or by indictment, in any court of record in this state; one moiety to the state, and the other to the person who will inform and sue for the same.—(b.)

III. All lotteries authorized by act of the legislature shall be forfeited, unless the same shall be drawn and completed within the term of five years, from the date of the grant.—(c.)

IV. A tax of ten thousand dollars shall be imposed on every person, or persons, who shall open, or keep open, any office for the sale of lottery tickets, or who shall sell, within this state, any lottery tickets, in any other lotteries, than those, which are authorized by the laws of this state: And it shall be the duty of the tax collectors in the districts, respectively, in which such lottery offices are opened, in default of the person, or persons, keeping such offices, to return the same, and pay the tax imposed by law, to issue his execution, as in other cases of default.—(d.)

## MANDAMUS, AND QUO WARRANTO.

If any person, or persons, shall usurp, intrude into, or unlawfully hold and execute, any office, or franchise, it shall be lawful for the several courts in this state, respectively, having competent jurisdiction, to order an information in the nature of a *quo warranto*, to be exhibited at the relation of any person, or persons, desiring to sue, or prosecute the same, who shall be mentioned in such information, to be the relator, or relators, against the person, or persons, charged with so usurping, intruding into, or unlawfully holding and executing, any such office; and the person, or persons, against whom any such information shall be prosecuted, shall appear and plead as of the same term, or session, in which the said information shall be filed, unless further time to plead shall be granted by the court; and the relator shall, in all cases, proceed with all convenient speed.—(e.)

II. If any person shall be adjudged guilty of an usurpation of, intrusion into, or unlawfully holding and exercising any of-

(b)—1762, P. L. p. 257. (c)—1810, *Seas. Acts*, p. 69. The commissioners of a lottery are bound by the terms of the scheme they exhibit; and where they permit the time, in which, by the scheme, the lottery was to be drawn, to elapse without any drawing, a purchaser of tickets is entitled to an action to recover back his money. *2 Mrs. & McCord*, p. 550. *Waddie vs. Commissioners of the Pickensville Lottery*. (d)—1820, *Seas. Acts*, p. 15. (e)—1721, *P. L. Appx.*, p. 22.

fice, as aforesaid, it shall be lawful for the said courts, respectively, as well to give judgment of ouster against such person, as to fine him for such usurpation, intrusion, or unlawful holding; and in all such cases it shall be lawful for the said courts to give judgment for costs to the prevailing party.—(a.)

III. When any writ of mandamus shall issue out of any of the said courts, and a return shall be thereunto made, it shall be lawful for the person, or persons, prosecuting such writ, to plead, or traverse all, or any of, the material facts contained in the said return; to which the person, or persons, making such return, shall reply, take issue, or demur; and such further proceedings shall be had therein, for the determination thereof, as might have been had, if the person, or persons, suing such writ, had brought his, or their, action on the case for a false return; and in case a verdict shall be found for the plaintiff, or plaintiffs, or judgment be given for him, or them, either upon a demurrer, or *nil dicit*, or for want of a replication, or other pleading, he, or they, shall recover his, or their, damages and costs, in such manner, as he, or they, might have done in such action on the case; such damages and costs to be levied by writ of *scire facias*, or *capias ad satisfactum*; and a peremptory writ of mandamus shall be granted without delay, for him, or them, for whom judgment shall be given, as might have been, if such return had been adjudged insufficient; and in case judgment shall be given for the defendant, or defendants, he, or they, shall recover his, or their costs, to be levied in manner aforesaid.—(a.)

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### MARRIAGE CONTRACTS.

All marriage contracts, deeds, and settlements, shall therein describe, specify, and particularize the real and personal estate thereby intended to be included, comprehended, conveyed, and passed; or shall have a schedule thereto annexed, containing a description, and the particulars and articles of the real and personal estate intended to be conveyed and passed by such marriage contracts, deeds, and settlements; which schedule shall be thereto annexed, and signed, executed, and delivered by the parties thereto interested, at the time of the signing, executing and delivering of the said marriage contracts, deeds, and settlements, and be subscribed by the same witnesses who subscribed the said marriage contracts, deeds, or set-

tlements, and shall be recorded therewith; otherwise, and in default of such schedule and recording thereof, as aforesaid, such marriage contracts, deeds, and settlements, shall be deemed fraudulent, null, and void, with respect to creditors and *bona fide* purchasers and mortgagees: Provided that where any marriage settlement shall be made previous to marriage, the property thereby settled, shall not, in default of a schedule, or not being duly recorded, be liable to the payment of any debts contracted by any husband previous to such marriage, but only to such debts and contracts, as shall be incurred and made by the said husband, subsequently to the marriage taking place.—(m.)

II. All marriage contracts, deeds, and settlements, entered into for securing any part of the estate, real, or personal, of any person, or persons, whomsoever, in this state, shall, within three months after the execution thereof, be duly proved and recorded, or lodged in the office of the secretary of state of this state, to be recorded.—(n.)

III. All marriage contracts, deeds, and settlements, which existed, and were in legal force and operation, on the eighth day of March, one thousand seven hundred and eighty five, and not recorded agreeably to the foregoing directions, after being duly attested and proved, shall be recorded, or lodged in the secretary's office of this state, within eighteen months from the date hereof; and in case of neglect, or default, of recording, or lodging the said marriage contracts, deeds, and settlements, within the time and in the manner herein directed, the same, and every thing therein contained, shall be deemed fraudulent, and be null and void with respect to creditors, and *bona fide* purchasers and mortgagees.—(o.)

### MASTER AND APPRENTICE.

EVERY person under the age of twenty-one years, intending to be bound by indenture as an apprentice in this state, shall execute such indenture in the presence, and with the approbation, of his, or her, father, mother, or guardian; (p) which presence and approbation of such father, mother, or guardian, shall be certified by some justice of the peace, for the county, in which such indenture is executed, upon application for that purpose to him made, by the master, or mistress, of such apprentice; and such indenture, so executed and certified, shall be good

(m)—1793, June 1, 1st Faust, p. 210. (n)—1785, P. L. p. 357. (o)—1792, Dec. 21, 1st Faust, p. 209. (p)—See P. L. p. 176 and 490, and 2d Faust, p. 265.

and effectual to all intents and purposes as if such apprentice were of full age: Provided, that nothing herein contained shall extend to oblige any male apprentice to serve after he shall have attained the age of twenty-one years, or a female after she shall have attained the age of eighteen years.—(h.)

II. It shall be lawful for any person to take one or more apprentices, indented according to the foregoing directions, and to teach such apprentice, or apprentices, the lawful trade, art, or mystery, specified in the indentures, respectively, of such apprentices, during the time therein limited; and to retain and keep, in his, or her, service, such apprentice, or apprentices, until the expiration of the said time, or until such apprentice, or apprentices, shall be lawfully discharged.—(h.)

III. It shall be lawful for the master, or mistress, of any such apprentice, upon sufficient cause, to be approved by the parent, or guardian, as aforesaid, to assign and transfer the indenture of such apprentice to any other master, or mistress, exercising, within this state, the same employment, calling, trade, art, or mystery; which assignment so made, shall be as valid and effectual to the assignee, as to the time remaining unexpired, as if the said apprentice had been originally indented to such assignee; and the said assignee, on accepting such assignment, shall be equally bound to the said apprentice, according to the tenor of the said indenture, as the original master or mistress was.—(h.)

IV. The time of service of any regular apprentice remaining unexpired, at the death of any master, or mistress, and not before assigned, shall be deemed and taken as assets in the hands of the executors, or administrators, of such master, or mistress; and it shall be lawful for such executors, or administrators, to retain such apprentice in their own service during the remainder of such time: Provided, the executors, or administrators, so retaining such apprentice, do, at the time, carry on, and exercise, by themselves, or some other white person, in their employment, within the district, where the testator, or intestate, lived, the same employment, calling, art, mystery, or trade, to which such apprentice was bound, by his, or her, indenture; or otherwise, it shall be lawful for such executors, or administrators, to assign and transfer such indentures, and the time therein unexpired, with the consent of any two justices of the peace of the district where the assignee resides, to any other person carrying on and exercising, within this state, the same employment, calling, art, mystery, or trade; which said indenture so retained, or assigned, shall be valid and effectual to the executor, or administrator, so retaining, or to the assignee, as to the time remaining unexpired, as if the said apprentice had

## MILITIA.

been originally indentured to such executor, administrator, or assignee; and the said executor, administrator, and assignee, on retaining such apprentice, or accepting such assignment, shall be equally bound to such apprentice, according to the tenor of the indenture, as the original master, or mistress was.—(b.)

V. If any master, or mistress, abuse or ill treat his, or her, apprentice, or if any apprentice do not perform his, or her, duty to such master, or mistress, such master, mistress, or apprentice, being grieved, and having cause to complain, shall repair and make such complaint to any two justices of the peace within the district, where such master, or mistress, resides, who shall make such order and direction between the parties, as the equity and justice of the case shall require; but if such master, mistress, or apprentice, shall not be satisfied with such order and direction of the said justices, it shall be lawful for the said master, or mistress, or apprentice, to appeal from such order to any judge of the court of common pleas and general sessions, (o) who shall summon all the parties concerned to appear before him, and shall examine the said cause of complaint, and the order and direction therein made by the said justices, and confirm, or reverse, the said order and direction, or make such new order on the occasion, as to him shall seem meet; and upon appearance of the parties before the said judge, or default made after due summons for that purpose, and bearing the matter before him, if he shall think it proper to discharge the said apprentice, from his, or her, apprenticeship, then the said judge shall have full power and authority, in writing, under his hand and seal, to pronounce and declare, that he has discharged the said apprentice from his, or her, apprenticeship, with the cause, or causes thereof: And the said writing, so made and filed by the clerk of the court of sessions among the records of the said court, shall for ever thereafter, be a sufficient discharge for such apprentice, against his, or her, master, or mistress, their executors, or administrators. And if default shall be found to be in the apprentice, then the said judge shall have authority to cause such due correction and punishment to be inflicted upon the said apprentice, and to give such further order and direction concerning him, or her, as in his discretion the case shall require.—(m.)

## MILITIA.

THIS state shall be divided into five divisions, and to each division there shall be a major-general. The first division shall

(b)—1740, P. L. p. 176. (o)—See P. L. p. 177 and 469. (m)—1740, P. L. p. 177.

comprehend the districts of Edgefield, Abbeville, Pendleton, and Greenville. The second division shall comprehend the districts of Barnwell, Beaufort, Colleton, Charleston, Orangeburg and Lexington, except the Dutch Fork, between Saluda and Broad rivers. One other division shall comprehend the districts of Georgetown, Williamsburg, Horry, Marion, Marlborough, Chesterfield and Darlington. One other division shall comprehend the districts of Richland, Sumter, Kershaw, Lancaster, Chester and Fairfield; and the other division shall comprehend the districts of Union, York, Spartanburg, Newberry and Laurens.—(a.)

II. The said divisions shall be, severally, subdivided into brigades, regiments, battalions and companies.—(b.)

III. When any vacancy shall take place in any of the military commissions of the militia of this state, the same shall be filled by election in the following manner: When any vacancy shall take place in the commission of major-general, the governor, for the time-being, shall forthwith issue his orders to the several brigadier-generals of the division, in which such vacancy shall happen, requiring such brigadier-generals to order an election in each regiment within the division, in which such vacancy shall have occurred, for a major-general, to fill such vacancy: And all commissioned officers of the division, in which such vacancy shall have happened, shall be entitled to a vote for a major-general; and any commissioned officer of the division, in which such vacancy shall have occurred, shall be eligible to the office of major-general; and each colonel shall return the state of the polls of his regiment, to the brigadier-general, who shall transmit the same to the governor, who is hereby empowered to pronounce the person having the greatest number of votes to be duly elected, and shall commission such person accordingly.—(c.)

IV. When any vacancy shall take place in the commission of brigadier-general, the major-general, and in case there is no major general, then the next commanding officer of the division, shall forthwith issue his orders to the several colonels of the regiments composing the brigade, where such vacancy shall be, to hold, in each of their respective regiments, an election for brigadier-general to fill such vacancy; and all commissioned officers of the brigade, where there shall be such vacancy, shall be entitled to vote for brigadier-general to fill the same. And any commissioned officer of such brigade shall be eligible to the office of brigadier-general; and each colonel shall attend the counting out of the votes, and return the state of the polls of his regiment, to the commanding officer of the division; who shall

(a)—1814, Sess. Acts, p. 36. (b)---ibid, p. 37, and 1st Faust, p. 306.

(c)—1816, Sess. Acts, p. 12.

## MILITIA.

pronounce the person having the greatest number of votes duly elected, and commission him accordingly.—(b.)

V. Where any vacancy shall take place in the commission of colonel of infantry, the same shall be filled by election, by all free white men, above the age of eighteen years, who reside within the said regiment, except such persons as are attached to the cavalry, or any regiment of artillery; and the person having the greatest number of votes shall be the person elected.—(b.)

VI. When any vacancy shall take place in the commission of lieutenant-colonel, the major then in commission, in the same regiment, shall be immediately commissioned lieutenant-colonel; and wherever a vacancy shall take place in the commission of major, the same shall be filled by election, by all free white men above the age of eighteen years, who belong to the battalion, where such vacancy shall occur; and the person having the greatest number of votes shall be elected.—(b.)

VII. When any vacancy shall take place in the commission of captain, first lieutenant, second lieutenant, or ensign, of any beat company, the same shall be filled by election, by all free white men above the age of eighteen years, residing within said beat company; and the person having the greatest number of votes shall be the person elected: Provided nevertheless, that nothing herein contained shall extend to any volunteer corps of artillery, cavalry, or light infantry, who shall elect their respective officers from amongst themselves, in the following manner: when any vacancy shall take place in the commission of colonel of cavalry, the same shall be elected from amongst the officers, non-commissioned officers, and privates, of the said regiment, by themselves; the person having the greatest number of votes to be the person elected.—(c.)

VIII. When any vacancy shall take place in the commission of lieutenant colonel, or major of cavalry, or major of artillery, the same shall be filled by election, by the officers, non-commissioned officers, and privates, composing the said battalion, or squadron, from amongst themselves; the person having the greatest number of votes to be the person elected.—(c.)

IX. When any vacancy shall take place in the commission of captain, first lieutenant, second lieutenant, ensign or cornet, of any company of artillery, light infantry, or troop of cavalry, the same shall be filled by election, by the officers, non-commissioned officers, and privates of the said company, or troop, from among themselves; and the person having the greatest number of votes shall be the person elected.—(c.)

X. When the commission of colonel in any regiment (if infantry) shall become vacant, the brigadier-general, and in case

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(b)---1816, Sess. Acts, p. 13. (c)---Ibid, p. 14.

there be no brigadier-general, or major-general, commanding said regiment, the officer next in command, in said regiment, shall issue his order, to be extended to each captain, or commanding officer of a company constituting said regiment, to call to his assistance two of his subaltern officers, or if none, two other fit and proper persons, to open and hold a poll at their respective muster grounds; which said captain shall advertize, for at least forty days, at three public places in the bounds of his command. The said managers shall hold the polls one day, from eleven o'clock in the morning until three o'clock in the afternoon; and shall meet at the regimental muster ground, the first or second day after the election, as may be ordered by the officer, who shall order such election, to count over the votes and declare the election: And when the commission of major shall become vacant, the colonel, and if there be no colonel, the officer next in command, in the said regiment, shall order each captain, or commander, of a company, to call to his assistance two of his subaltern officers, or other fit and proper persons, to open and hold a poll at their respective muster grounds, giving forty days' notice, by advertising in three public places in the bounds of their command. The said managers shall hold the poll on the day at their muster ground, from eleven o'clock in the morning until three o'clock in the afternoon, and shall meet on the battalion muster ground, or some public house, near the same, on the day following, and count over the votes, and declare the election. The managers of elections to be appointed in pursuance of this act, before they proceed to hold any election, shall be duly sworn that they will impartially and faithfully hold such election: And the presence of not more than one manager from each place of election shall be necessary at the time of counting over the votes, and declaring the election.—(d.)

XI. When any vacancy shall take place in a captain's commission, the lieutenant-colonel, or officer commanding the battalion, or squadron, shall appoint two fit and proper persons within the said company, or troop, to manage the said election, who shall hold the polls at the usual muster ground of the said troop, or company, from eleven o'clock in the morning until three o'clock in the afternoon, after having advertized the same for twenty days before the said election, in, at least, four public places, in the said company, or troop; and, on the same evening, the managers shall count over the votes, and declare the election.—(e.)

XII. When the commission of first lieutenant, second lieutenant, ensign, or cornet, shall become vacant, the captain, or, if there be no captain, the major, or lieutenant-colonel, commanding the said company, or troop, shall appoint two fit and

(d)—1818, Sess. Acts, p. 40. (e)—1816, Ibid, p. 18.

## MILITIA.

proper persons, within the said company, or troop, to manage the said election; who shall hold the polls at the usual muster ground of the said troop, or company, from eleven o'clock in the morning until three o'clock in the afternoon, after having advertised the same for twenty days before the said election, in, at least, four public places in the said company, or troop, and, on the same evening, the managers shall count over the votes, and declare the election.—(a.)

XIII. When any division, brigade, regiment, battalion, squadron, company, or troop, shall be embodied, and in actual service, either under the authority of this state, or of the United States, the vacancies therein shall be filled by seniority, agreeable to the usages and customs of war.—(a.)

XIV. Whenever an election is ordered for a major-general, or brigadier-general, it shall be the duty of each colonel, who shall be ordered to hold such election, to give fifty days' notice, in his regiment, of such election, and post up the said notice for that length of time, at least at one public place in each beat in his regiment.—(b.)

XV. Whenever any vacancy shall happen, of a commissioned officer, in any troop, or company, of militia, and the men composing such troop, or company, shall neglect, or refuse, for the space of three months, due notice of an election having been given, to fill up the same, as the law directs, it shall be lawful for the commanding officer of the regiment, to which such troop, or company, shall belong, with the consent of the commanding officers thereof, to fill up such vacancy.—(c.)

XVI. Every militia officer, who shall be appointed to conduct an election for an ensign, or other commissioned officer, shall fairly enter, or cause to be entered, in a book, or roll, the names of all persons voting at such election, and shall provide a box, or glass, for the purpose of receiving the ballots; and the officer so managing such election, may require any person offering to give his vote thereat, to swear that he is a resident within the company beat, or is, otherwise, properly enrolled therein; and is then liable to do duty, as an alarm man, or otherwise; and the officer holding such election shall make oath, that he has managed the election according to law, to the best of his knowledge and belief, and the orders he shall have received from the commanding officer, for conducting the same.—(d.)

XVII. In all cases of contested elections, the validity of the same, in the case of field officers, shall be referred to the brigadier-general of the brigade, who shall call to his assistance two field officers of some other regiments of his brigade, not interest-

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(a)—1816, Sess. Acts, p. 15. (b)—Ibid, p. 16. (c)—1800, 2d Faust, p. 664. (d)—1800, 2d Faust, p. 363.

## MILITIA.

283

And in the event of the dispute; and in the election of captains, lieutenants, and ensigns, shall be referred to the field officers of the regiment to which they belong.—(h.)

XVIII. In all cases of contested elections, for field officers, where the candidate shall think himself aggrieved by the determination of the brigadier-general and field officers, who shall decide on an election; such candidate may appeal from such decision to the major-general of the division to which he belongs; and the said major-general, together with a board of general and field officers, to be appointed by the said major-general, and to consist of the said major-general, and not less than one brigadier-general, and three field officers, shall examine into the merits of the said election, and decide thereon; which decision shall be final and conclusive, and the person, in whose favor they shall decide, shall be commissioned by the governor.—(m.)

XIX. All officers shall reside within their respective commands, and on their removal therefrom, their commissions shall be vacated.—(n.)

XX. Every militia officer shall, within six months after his election, or appointment, take the following oath, or affirmation, before some justice of the peace, who shall certify the same on the back of his commission: "I, \_\_\_\_\_ do solemnly swear, (or affirm) that I will support and maintain, to the utmost of my ability, the laws and constitution of this state, and of the United States;" and every officer neglecting so to do, shall vacate his commission.—(o.)

XXI. Every captain, or commanding officer of a company, shall enroll every citizen, who shall, from time to time, arrive at the age of eighteen years, or come to reside within his beat, and without delay, notify such enrollment to such citizen, by some non-commissioned officer of the company, who shall be a competent witness to prove such notice; and all disputes that may happen, with respect to the age, or ability, of any person, to bear arms, shall be determined by the captain, or commanding officer, of the company, with a right of appeal, by the person aggrieved, or any other person, belonging to the company, to the lieutenant-colonel, or commanding officer of the regiment.—(p.)

XXII. All free white aliens, or transient persons, above the age of eighteen, and under the age of forty-five years, who shall reside in this state for the term of six months, shall immediately thereafter be subject and liable to do and perform all patrol, and militia duty, which may be required by the commanding officer of the beat, or district, in which such transient person may reside, and be subject to all pains and penalties inflicted by law:

(h)—1794, 1st Faust, p. 308. (m)—1795, 2d Faust, p. 35. (n)—1st Faust, p. 306. (o)—Ibid, p. 309. (p)—1794, 1st Faust, p. 310.

## MILITIA.

Provided, that nothing herein contained shall affect any natural born citizen of any foreign state or potentate, who shall be actually at war with the United States, or compel such alien, or transient person, to serve on patrol or militia duty, out of the particular district of the regiment to which he shall be attached.—(a.)

**XXIII.** Whenever it shall be considered necessary for any militia officer, not under the rank of captain, or other commanding officer of a company, to take a census of the number of persons within his beat, company, or district, liable to the performance of militia duty, it shall be the duty of such officer to demand the name, or names, of each and every householder, person, or persons, so resident therein, and to inquire into his, or their, liability to perform such duty in his said beat, company, or district: And if any householder, or other person residing in his beat, shall fail to satisfy the necessary inquiries of such officer, touching his liability to be enrolled as a militia man, such householder, or other resident, shall forfeit and pay the sum of ten dollars, to be sued for, and recovered, before any one justice of the peace, and paid into the hands of the paymaster of the regiment, in which such person shall reside.—(b.)

**XXIV.** Persons of the following professions and descriptions shall be excused from militia duty, except in times of invasion, or alarm, to-wit: The lieutenant-governor, for the time being; the members of both branches of the legislature, and their officers; the judges, commissioners, registers, and clerks of the several superior courts of law and equity; the commissioners of the treasury, and their clerks; the secretary of state, and his deputies; the attorney-general; the circuit solicitors; the surveyor-general, and his deputies; the ordinaries and registers of the several districts; the sheriffs and gaol keepers in the several districts; fire-masters, and all persons employed in any department under them;] (c) all continental officers, who were deranged, or who served to the end of the war; all regular clergymen of any sect, or denomination; all persons holding offices or commissions under the United States; all regular bred practising physicians and surgeons; all school-masters, who have under their tuition not less than fifteen scholars; all students at school or at college; the intendant and wardens of Charleston and Camden, their treasurers, and the officers of their courts, [all members of the city guard of Charleston, (o);] all branch pilots for the several ports; one white man to each established ferry, or toll bridge; one white man to each water grist mill, wind mill, fulling-mill, or oil mill; three white men to each forge, and five to each furnace erected at any iron mine or

(a)—1794, 1st Faust, p. 321. (b)—1800, 2d Faust, p. 363. (c)—2d Faust, 362. (o)—Sess. Acts. 1812, p. 32.

mines in this state, who shall constantly reside and work at the same; all persons under the age of eighteen, and over the age of forty-five years; and all militia officers who have held their commissions for seven years.—(c)

XXV. All free negroes, and Indians, (nations of Indians in amity with this state excepted) moors, mulattoes, and mestizoes, between the ages of eighteen and forty-five years, shall be obliged to serve in the said militia as fatigue men and pioneers, in the several regimental beats in which they reside; and upon neglect or refusal to attend, when summoned on duty, shall be liable to the like penalties, and forfeitures, as privates in the same regiment, or company, are liable to by law.—(d.)

XXVI. All persons enrolled in any company of militia in this state, who shall remove out of the company, beat or precinct, or settle, or reside for the space of three months, in any other part of the state, and not enroll his name, and do ordinary militia duty in the place or precinct to which he shall so remove, and remain for the time abovementioned, or any longer space of time, shall be liable to be fined as a defaulter, in case the company, in which his name is enrolled, has performed militia duty during his absence.—(g.)

XXVII. Every free white man of this state liable to bear arms in any of the regiments, corps, companies, or troops, who shall appear at any regimental, battalion, or company muster, not provided with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box therein, to contain not less than twenty-four cartridges suited to the bore of his musket, or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder, shall, for each and every default, forfeit and pay a sum not exceeding one dollar and seven cents, or the sum of fifty cents for the omission of each article of arms by law required.—(h.)

XXVIII. The commissioned officers shall severally be armed with a sword, or hanger, and espontoons.—(h.)

XXIX. Every master, or other person, having the government of any white apprentice, or man servant, shall, at his own proper costs and charges, furnish and provide every such apprentice, or man servant, liable to do militia duty, during his servitude, with the arms and accoutrements required by law; and every master, or other person, as aforesaid, shall constantly

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(c)—1794, 1st Faust, p. 320. Deputy post-masters and mail carriers exempt. See A. C. 1794—Oversets, toll receivers, lock keepers, and white laborers employed by Santee Canal Company exempt.—See 3d Faust, p. 36.—(d)—Ibid., p. 328. (g)—1808, Sess. Acts, p. 56. (h)—1794, 1st Faust, p. 318, and act of Congress, May 8, 1793—knapsacks dispensed with at ordinary musters.

keep such arms and accoutrements for every such apprentice, or servant; and shall compel him, or them, completely armed and accoutré, as aforesaid, to attend all musters, trainings, and exercises directed by law; and in case such apprentice, or servant, shall not appear, or his arms, or accoutrements, shall be found deficient, the master, or other person, having the government of such apprentice, or white servant, shall, for every such default, be subject to the same forfeitures and penalties, as are inflicted on other persons made liable to appear and bear arms at musters, exercises, and trainings: Provided always, that if any servant duly furnished and provided, as is before directed, shall be sent to muster by the person, under whose government he shall be, and shall, of his own accord, and without the consent of his master, neglect to appear at any muster, training, or exercise lawfully appointed, the said master, or other person, under whose government such servant may be, shall, nevertheless, be liable to the penalties by law inflicted for the default of such servant; but the servant, so offending, shall be obliged to serve his master two weeks for every penalty so paid by his master; and if any servant, or apprentice, shall make away with the arms so provided for him, he shall be liable to make his master full satisfaction.—(m.)

XXX. As soon as the arms intended to be purchased for the militia of this state, shall be procured, they shall be distributed amongst the several regiments, in exact proportion to the number of effective men composing the said regiments, respectively: And the lieutenant-colonel of each regiment, on the receipt of the said arms, shall give twenty days' public notice, at the least, in as many different places of the regiment as there are companies composing it, that, on a certain day, and at a particular place, in the most central part of the said regiment, the said arms will be exposed to sale for cash, at ten dollars, to any person enrolled and liable to do militia duty in the said regiment; and shall continue the sale thereof until the whole be disposed of: And the several lieutenant-colonels in the state, shall, at least once in every year, render to the comptroller-general, upon oath, a particular account of all the cash received by them on the sale of the said arms, and pay the amount into the treasury, which money, when paid into the treasury, shall constitute a fund for further purchases of arms, to be disposed of on the same terms as hereinbefore directed.—(n.)

XXXI. As soon as the said arms shall be received and exposed to sale by the lieutenant-colonel of any regiment, any person entitled to vote for members of the legislature of this state, and liable to do militia duty in the said regiment, who shall attend any

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(m)—1794, 1st Faust, p. 313. (n)—1807, Sess. Acts, pp. 33-34.

company, troop, battalion, or squadron, or regimental muster, without the arms required by law for him to have, shall forfeit and pay a fine of one dollar and fifty cents for every such default, unless he should swear, or otherwise make it appear, that all the arms allotted to that regiment have been sold, or shall swear that he is too poor to pay for such arms.—(n.)

XXXII. All sergeants and corporals shall be appointed by the captains of companies, respectively; and if any person liable to do duty at common musters, shall be appointed a sergeant, and shall refuse to do duty as such, he shall be fined in the sum of seventeen dollars and fourteen cents; but no person shall be obliged to act as sergeant more than one year at a time.—(a.)

XXXIII. Every company shall have a place of rendezvous, at which they shall, respectively, assemble once in every two months, (except in Charleston, Georgetown, and Camden, where they shall assemble once a month,) by companies, for the purpose of training, disciplining, and improving in martial exercise, but shall not be kept at the place of exercise more than one day at a time; and each battalion shall be obliged to rendezvous, in like manner, for the same purpose, not oftener than twice a year, either in battalion, or regiment, at such place as the brigadier shall think proper; and shall not be kept at the place of exercise more than one day at a time.—(b.)

XXXIV. Each commanding officer of a corps, when on duty or parade, shall have authority to ascertain and fix certain necessary limits and bounds to their respective parades, and places of exercise, (no road in which people usually travel, nor more than one half the width of any street, to be included,) within which no spectator shall have a right to enter, without leave from the said commanding officer; and in case any person shall so intrude within the lines of the parade, or place of exercise, after being once forbidden, he shall be liable to be confined under guard during the time of exercise, at the discretion of the commanding officer; and the commanding officer of any division, brigade, regiment, battalion, squadron, troop, or company, who shall call out the men under his command to muster, shall be authorized to appoint a sutler, to retail spirituous liquors at the muster ground of said division, brigade, regiment, battalion, squadron, troop, or company, without any other license or permission: Provided, the sutler, so appointed, do furnish a suitable field to exercise the said troops on, to be approved by the commanding officer, who shall have ordered the said muster.—(d.)

XXXV. It shall be lawful for every colonel, or commander,

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(n)—1807, Sess. Acts, pp. 33-34. (a)—1st Faust, pp. 309-351. (b)—1794, Ibid., p. 309. (d)—Ibid., p. 352. (d)—1816, Sess. Acts, p. 16.

for the time being, of any of the militia regiments, or battalions, within the state, to order out such regiment, or battalion, for the purpose of regimental, or battalion musters, or training, at any such time and place, within their respective regimental districts, as they may think necessary and proper: Provided, that the said regiments shall not be continued on such muster or training more than one day at each time, nor more than three times in one year.—(g.)

XXXVI. The commanding officer of each regiment throughout the state shall be authorized, if he thinks fit, to exempt the men from turning out on parade in the months of July, August, and September: Provided they turn out not less than six times, in the year.—(h.)

XXXVII. Every lieutenant-colonel, who shall wilfully neglect to turn out at any regimental muster, shall be fined in the sum of forty dollars, and fifty per cent. on the amount of his last general tax; every major, for a like neglect, either at a regimental, or battalion, muster, shall be fined thirty dollars, and also fifty per cent. on the amount of his last general tax; every captain, for a like neglect, shall be fined twenty dollars, and also a sum not exceeding fifty per cent. on his last general tax; every subaltern officer, for a like neglect, shall be fined fifteen dollars, and also a sum not exceeding fifty per cent. on the amount of his last general tax; and every non-commissioned officer, and private, for a like neglect, shall be fined the sum of three dollars, and fifty per cent. on the amount of his general tax; every captain who shall wilfully neglect to turn out at any ordinary muster, shall be fined in the sum of six dollars, and also fifty per cent. on the amount of his last general tax; every subaltern officer, for a like neglect, shall be fined in the sum of four dollars, and also fifty per cent. on the amount of his general tax; and every non-commissioned officer and private, for the like neglect, shall be fined the sum of one dollar and fifty cents, and likewise fifty per cent. on the amount of his last general tax.—(m.)

XXXVIII. The lieutenants-colonels, or commandants of the respective regiments of this state, shall, at least once in every year, order and direct the several commissioned and non-commissioned officers under their command, to assemble, completely armed and accoutred, in some convenient and central place within their battalion or regimental precincts, one day previous to their battalion or regimental parade, or review, for the purpose of being instructed in the exercise and manœuvres intended to be performed by the battalion, or regiment, to which the said officers may be attached, at the next review or parade of the same; and every commissioned officer neglecting to obey

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(g)—1st Faust, p. 174. (h)—2d Faust, p. 144. (m)—1808, Sess. Acts, p. 53.

the order of his commander, as aforesaid, shall be liable to the fines following, to wit: A colonel shall be liable to a fine of forty dollars, and fifty per cent. on his last general tax; a major shall be liable to a fine of thirty dollars, and fifty per cent. on his last general tax; a captain shall be liable to a fine of twenty dollars, and a sum not exceeding fifty per cent. on his last general tax; and every subaltern officer shall, for a like neglect, be fined fifteen dollars, and a sum not exceeding fifty per cent. on his last general tax; and every non-commissioned officer, for a like neglect, shall be fined the sum of three dollars, and a sum not exceeding fifty per cent. on the amount of his last general tax.—(a.)

XXXIX. The rules and regulations of the field exercise and manoeuvres of infantry, compiled and adapted to the organization of the army of the United States, agreeably to a resolve of congress, shall, hereafter, be observed in the instruction and exercise of infantry within this state; and every officer of the state shall be furnished with a copy thereof: And every officer so furnished shall be compelled, upon the vacation of his commission, to deliver over to his successor, the said book, under the penalty of five dollars, to be recovered before any magistrate.—(b.)

XL. Every non-commissioned officer and private, who shall neglect, or refuse, to obey the order of his superior officer, while under arms, shall forfeit a sum not exceeding four dollars and twenty-eight cents, for every such offence; and if any such non-commissioned officer, or private, enrolled to serve in any volunteer company of artillery, infantry, or cavalry, shall refuse, or neglect, to perform such military duty, or exercise, as he shall be required to perform, or shall depart from his colors, or guard, without the permission of his superior officer, he shall forfeit a sum not exceeding four dollars and twenty-eight cents; and for non-payment thereof, the offender shall be committed, by warrant from the captain, or commanding officer of the company, or troop, then present, to which such offender may belong, or under whose command he may be, to the next gaol, there to be confined, until such fine, together with the gaoler's fees, shall be paid; and the respective sheriffs throughout the state shall receive the body of such offender, as shall be brought to them by virtue of a warrant under the hand and seal of such officer, as aforesaid, and him keep in safe custody, until such fines, as are mentioned in such warrant, together with the gaoler's fees, shall be paid; and the sheriffs and gaolers, respectively, shall be allowed the same fees, as are allowed in other cases: Provided, that the person so confined, shall, at the end of five days, or any shorter time, for which he may have

(a)—1808, Sess. Acts, p. 52, and do. 1809, p. 36. (b)—1815, Ibid. p. 16.

## MILITIA.

been committed, be released, on his swearing that he is unable to pay the fines and fees aforesaid.—(a.)

XLI. All fines shall be inflicted on non-commissioned officers and privates, by the judgment of a majority of the commissioned officers of the company, in which the offender is enrolled. A major-general shall be tried by a major-general to preside, and four brigadier generals; but if the attendance of a major-general cannot be conveniently procured, then by five brigadier-generals, the oldest to preside. A brigadier-general shall be tried by one, or more, brigadier-general and four field officers. A colonel shall be tried by an officer not under the rank of colonel, and four field officers. A major shall be tried by an officer not under the rank of a field officer, and four officers not under the rank of captain. A captain shall be tried by an officer not under the rank of a field officer, and four officers not under the rank of captain. And lieutenant, or ensign, shall be tried by an officer, not under the rank of field officer, and four other commissioned officers; and all non-commissioned officers and privates shall be tried by not less than three commissioned officers. (b) But it shall not be necessary, in order to constitute a battalion court martial, or court of enquiry, that a field officer should preside; but the same may consist of a captain, as presiding officer, and four other commissioned officers of said battalion, one of whom, at least, shall be of the rank of a captain. (c) And courts martial on non-commissioned officers and privates may, hereafter, be held by any three commissioned officers of the regiment to which they belong.—(d.)

XLII. Each member of a court martial shall take the following oath, or affirmation: "I, do swear (or affirm) that I will not divulge the sentence of the court, until the same shall be approved, or disapproved; nor will I, upon any account, or at any time whatsoever, disclose, or discover, the vote, or opinion, of any particular member of the court martial, unless required to give evidence thereof, by a court of justice, in a due course of law: And that I will well and truly try and determine the cases that shall be brought before me, according to law, and the evidence that shall be adduced: So help me God." And any member of the court shall be authorized to tender the above oath to the other members.—(e.)

XLIII. The governor, or commander in chief, shall appoint courts martial on general officers; the major-general shall appoint division courts martial, in their respective divisions; the brigadier-generals shall appoint brigade courts martial, in their respective brigades; the colonels shall appoint regimental courts martial, in their respective regiments; and the lieutenant-colonel and majors, shall appoint battalion courts martial, in their

(a)—1794, 1st Faust, p. 316. (b)—Ibid. p. 318. (c)—1816, Seco. Acts, p. 16. (d)—1815, Ibid. p. 14. (e)—1794, 1st Faust, p. 319.

respective battalions: And no sentence of a court martial shall be put in force, unless it be approved by the officer appointing the same, or by the commanding officers, respectively, for the time being.—(d.)

XLIV. If the conduct of any officer shall be represented to the governor, or commander in chief, the major-general of the division, brigadier-general of the brigade, or commanding officer of the detachment, to be so unmilitary and unbecoming of an officer, as to deserve cashiering, it shall be lawful for the governor, or commander in chief, major-general of the division, brigadier-general of the brigade, or commanding officer of the detachment, as the case may be, to order a court of inquiry; and if, on such inquiry, it appears that there is foundation for the charge, to have a court martial held, who shall make such order in the business, as they shall think consistent with military rule: Provided nevertheless, that such court of inquiry shall never consist of less than three officers, one of whom, at least, to be of the rank of the person accused.—(g.)

XLV. Every officer of the militia of this state, who shall be declared, by the sentence of a court martial, to be incompetent to discharge the duties of his station, shall be cashiered: Provided, every officer, after charges exhibited, shall be at liberty to resign. The said courts martial to be ordered by the officers commanding battalions, regiments, brigades and divisions, respectively; and on major-generals, by the commander in chief: and the members of every court martial, as well on officers, as on non-commissioned officers and privates, shall, in addition to the oath now prescribed by law, severally swear "that they will well and truly, try, and determine, the case, that shall be brought before them, according to law, and the evidence that shall be adduced." —(h.)

XLVI. All fines imposed for neglect of patrol and militia duty, generally, in every company, battalion, regiment, or brigade, shall be collected in the following manner, viz: by such person, or persons, as the majors, lieutenant-colonels, or commanding officers of regiments, or brigades, shall appoint to collect the same, within their respective commands: and the said persons, so to be appointed to collect the said fines, shall be allowed a percentage on the monies collected by them, respectively, not exceeding ten per cent.; and it shall be the duty of the senior officer presiding at a court martial, to furnish the collector with a list of fines, imposed by such court, within fifteen days after the said court shall have imposed the same; and the said collector shall, within thirty days after receiving such lists, notify to each delinquent, the amount of his fine, and re-

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(d)—1794, 1st Faust, p. 319. (g)—Ibid. p. 320. (h)—1815, Sess. Acts, p. 13.

quire the payment of the same; and if such delinquent so notified, shall neglect to pay the same, for the space of fifteen days after such notification, the said collector shall issue an execution, and may arrest thereunder, the body of the said delinquent, for satisfaction of the said fine, unless such delinquent shall point out sufficient property, which can be levied on for satisfaction of such fine; and it shall be the duty of the several tax collectors of this state, on the reasonable request of any commissioned officer, in the militia, or of any collector of militia fines, to discover and make known the amount of the last general tax of any defaulter, liable to be fined as aforesaid.—(p.)

**XLVII.** All fines and penalties incurred, or imposed, for neglect, or default, of patrol, or [ordinary] militia duty, (except in the parishes of St. Philip's and St. Michael's,) may be collected in the following manner, to wit: by warrant under the hand and seal of the captain, or other commanding officer of the company, or of the presiding officer of the court martial by which the fine is imposed; which warrant may be directed to any sergeant of the company, to which the delinquent belongs, commanding him to levy and collect the said fine, or fines; and the said sergeant is hereby authorized and required, under the penalty of twenty dollars, to call on every delinquent, who shall be named in such warrant, or in a schedule, or list, to the warrant annexed, and to demand payment for the said fine, or fines; and, on neglect, or refusal, to make such payment, after demand thereof, so as aforesaid made, then the said sergeant having the aforesaid warrant, shall, forthwith, proceed to collect the said fine, or fines, together with such costs, as are received by constables in small and mean causes.—(q.)

**XLVIII.** The form of the warrant to be issued by the captain, or commanding officer, of the company, or presiding officer of the court martial, for the collection of the said fines, shall be as follows:

**THE STATE OF SOUTH-CAROLINA.**

Whereas, the persons named in the schedule, or list, hereunto annexed, have been duly sentenced by a court martial, to pay the sums to their names annexed, this warrant, therefore, authorizes and requires you to levy and sell, of their respective goods and chattels, sufficient to pay the fine and costs, which have been adjudged against each of them, and pay over the same to the proper officer. Given under my hand and seal, the day of      one thousand eight hundred and

A. B. Capt. (L. S.)

And if the person, to whom the said warrant shall be directed, shall make return, that he cannot find any goods and chat-

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(p)—1809, Sess. Acts, p. 36. This mode appears to be still the law of St. Philip's and St. Michael's—Charleston. (q)—1813, Extra Sess. Acts, pp. 9-10.

this, to be levied on, then the officer, who issued the warrant, shall issue a warrant against the body of the delinquent, and take him to the common gaol, there to be confined until such fine, or forfeiture, or fines, or forfeitures, together with the gaoler's and sergeant's fees, shall be paid: And all district sheriffs and gaoler's, and city sheriffs and gaolers, in this state, shall receive the body of any such defaulter, or offender, who may be brought to either of them, under any such warrant, and to keep him in safe custody, until the amount specified in the warrant, together with the gaoler's and sergeant's fees, shall be paid. And the sheriffs and gaolers shall be allowed the same fees in such cases, as are allowed in other cases of commitment; and the sergeants shall be allowed the same fees, as constables have, for serving summonses, and for commitments for the same amount, or for levying an execution for the same amount: Provided always, that the person so committed, at the end of a certain time, to be computed at the rate of one day for every seventy-five cents he may be condemned to pay, be released, upon swearing that he is unable to pay the amount, for which he may be committed, and the fees directed to be paid.—(a.)

XLIX. All officers ordering courts martial, or authorized to approve such courts, within their respective commands, shall, as often as they think proper, and once, at least, in every year, compel the collectors of fines, as aforesaid, respectively, and all others, who may have received, or collected, fines for neglect of patrol, or militia duty, to come to an account and reckoning, and pay over the said fines, so collected, to be applied according to law.—(b.)

L. All fines, except for neglect of patrol duty, (c) imposed in any regiment, corps, company, or troop, shall be paid into the hands of the paymaster, or person acting as such, of such regiment, corps, company, or troop; and paid and appropriated by warrant under the hands of the major part of the field officers, or commanding officers of the corps, or captain, or commanding officer of the company, or troop, for the purpose of providing colors, drums, bugles, fises and trumpets for the respective battalions, corps, companies, or troops, and carrying expresses relative to military matters, and for the purchasing and providing arms and accoutrements for such of the men of the respective battalions, companies, and troops, as may be unable to provide themselves therewith. And it shall be the duty of the paymaster, or person acting as such, of each battalion, corps, company, or troop, once in every year, to render an account to the brigadier, or officer commanding the brigade, of all his receipts and expenditures, in pursuance of any militia law.—(d.)

(a)—1794, 1st Faust, p. 363. (b)—1809, Ses. Acts, p. 36. (c)—1819<sup>o</sup> Ses. Acts, p. 34; and Post, title Patrol, sec. vii. (d)—1794, 1st Faust, p. 217<sup>o</sup> and Ses. Acts, 1819.

## MILITIA.

L.I. In cases, where any regiment, battalion, or company, of the militia of this state, shall be aggrieved, by the division made by the different commissioners appointed by the several brigadier generals for the purpose of dividing the regiments belonging to their respective brigades into battalions and companies, such regiment, battalion, or company, so aggrieved, shall make application, for redress, to the brigadier general of the brigade, to which the regiment belongs; who shall appoint two field officers of the brigade, who are not interested in the decision of the dispute, who shall be authorized, should it appear to them expedient, to make, direct, and order, any arrangement, or division, of the said regiments, battalions, or companies, as to them shall appear advantageous to the same: Provided, that such arrangement, or division, be, as nearly as conveniently may be, in conformity with the act of congress before mentioned.—(a.)

L.II. The uniform of the officers of the militia of this state shall be the same, in every respect, as that now established in the army of the United States, for officers of similar grade and character: And all officers shall be required to conform to this arrangement, immediately on their election: Provided, nothing herein contained shall extend to officers of volunteer companies.—(b.)

(a)—1795, 2d Faust, p. 35. (b)—1815, Sess. Acts, p. 21.

## NOTE.

Regulations of the War Department, relative to the uniform of the Army, as approved by the President, 28th June, 1814.

*Changes in the Uniform of the Army of the United States.*

The coat of the infantry and artillery shall be uniformly blue, no red collar, or cuffs; and no lace shall be worn by any grade, except in epaulets, and sword-knots.

All officers will wear coats of the length of those worn by field officers: All the rank and file will wear coatees. The button holes of these will be trimmed with tape on the collar only. Leather caps will be substituted for felt; and worsted, or cotton, pompons for feathers.

General officers, and others of the general staff, not otherwise directed, shall wear cocked hats without feathers, gilt bullet buttons, and button holes in the herringbone form.

The epaulets of major-generals will have, on the gold ground of each strap, two silver stars.

The epaulets of brigadiers will have, on each strap, one star.

The uniform of the physician, and surgeon, and apothecary-general, and hospital surgeons and mates, shall be black, the coats with standing collars, and, on each side of the collar, a star of embroidery, within half an inch of the front edge.

The rules with respect to undress are dispensed with, excepting that cockades must always be worn.

## OF THE GENERAL STAFF.

The Coat: Single breasted, with ten buttons, and button holes worked with blue twist, in front, five inches long at the top, and three at the bottom. The standing collar to rise to the top of the ear, which will determine its width. The cuffs not less than three and a half, nor more than four inches wide. The skirts faced with blue, the bottom of each not more than seven, nor less than

LIII. The governor, the major generals, and brigadier-generals, shall have a right to appoint their respective aids de

three and a half inches wide; the length to reach to the bend of the knee. The bottom of the breast, and two hip buttons to range.

1. On the collar one blind hole, five inches long, with a button on each side.
2. The blind holes on each side of the front, in the herringbone form, to be in the same direction with the collar, from the top to the bottom.
3. Blind holes, in the like form, to proceed from four buttons placed lengthwise, on each skirt. A gilt star on the centre of the bottom, two inches from the edge.
4. The cuffs to be indented within one and a half inches of the edge, with four buttons lengthwise on each sleeve, and holes to the three upper buttons, corresponding with the indentation of the cuff, on the centre of which is to be inserted the lower button.

5. All general officers will be permitted to embroider the button holes. The commissary-generals of ordnance, the adjutants, inspectors, and quarter-masters general, and the commissary-general of purchases, will be permitted to embroider the button holes of the collar only.

Vest, breeches, and pantaloons: White (or buff) for general officers. Blue pantaloons may be worn in the winter, and nankin in the summer. Vest, single-breasted, without pocket flaps.

1. Breeches, or pantaloons, with four buttons on the knees, and gilt knee buckles.

2. High military boots and gilt spurs.

Black stock of leather, or silk.

Chapeaus of the following form: The fan not less than six and a half, nor more than nine inches high, in the rear; nor less than fifteen, nor more than seventeen and a half inches from point to point, bound round the edge with black binding half an inch wide.

1. Button and loop black.

2. Cockade the same, four and a half inches diameter, with a gold eagle in the centre.

Swords: Yellow mounted, with black, or yellow, gripe. For the officers of the adjutant, inspector, or quarter-master general's departments, sabres: for all others straight swords.

Waist-belts of black leather. No sashes.

Epaulets: Of gold, according to rank.

Note. Officers of the corps of engineers will wear the uniform already established for that corps.

The dress of the hospital staff will conform, as to fashion, to the uniform of the staff, except that they will wear pocket flaps, and buttons placed across the cuffs, four to each, and covered buttons in all instances, of the color of the coat (black). Officers of the line appointed to a staff station, which confer no additional rank, will wear the uniform of their rank in the line, with high boots and spurs.

#### OF THE ARTILLERY.

Coat. Of the same general description with that of the staff, and

1. Pocket flaps, cross indented below, not less than two and a half, nor more than three inches wide, with four buttons, and blind holes: two buttons at the opening of the pocket of each skirt; and a diamond of blue cloth, ornamented one and a quarter inches on each side, the centre two inches from the bottom of the coat.

2. The blind holes on either side of the front, with the coat buttoned close to the collar, accurately to form lines with the corresponding ones opposite, from the top to the bottom, that is, not to represent herringbone.

3. The cuffs with four blind holes, extending from four buttons placed across on each.

4. Two blind holes on the collar, five inches long, with two buttons on each side.

5. Gilt buttons of the size and insignia furnished the commissary-general of purchases, from the war department.

## MILITIA.

camp. The governor and commander in chief shall be entitled to ten aids de camp, with the rank of lieutenant-colonel; the

**Vests, breeches, and pantaloons:** For the field and staff, the same as those described for the general staff; and vests and pantaloons, for the officers of the line, the same, except the first and second particular articles.

**Stocks and Chapeaus:** Of the same general description with those of the general staff:

1. Button and loop of the chapeau, yellow.

2. Black cockade of leather, four and a half inches diameter, with a gold eagle in the centre; a white feather to rise eight inches; that of the adjutant, white and red.

**Swords:** Cut and thrust, yellow mounted; with a black, or yellow, grip.

**Waist-belts:** Of white leather.

**Sashes:** To be worn only on a tour of duty, and round the waist.

**Epaulets:** Of gold, (bulion and strap,) according to rank. The adjutant, quarter-master, and pay-master, to wear a counter strap on the opposite shoulder.

The surgeons and mates, to include garrison surgeons and mates, will wear the same uniform, except the cape, which is of black velvet; the plume black.

## OF THE LIGHT DRAGOONS.

**Undress coat:** Blue cloth, single breasted, with one row of ten plated bullet-buttons in front; notched twist holes on each breast, from three and a half to four inches at the bottom, and from seven to eight at the top, to fill the breast, so as nearly to touch the sleeve, the length of the waist not to extend below the hips, the skirt to the bend of the knee, soldier's back, with two notched holes across each, the skirt and sleeve herring-bone, with four notched holes and buttons on each, the holes making an angle of about eighty-five degrees, the top of them to range with the hip buttons and bottom of the breast, turn backs of blue cloth, united at the bottom, by a silver embroidered fleur de lys, the skirts four and a half inches wide at the bottom, stand up collar, worked with silver braid.

**Pantaloons:** Worked on the fall, with silver braid, two rows down the side-seams, continued round the seat.

**Full Dress:** Hussar jacket, single breasted, with three rows of plated bullet buttons, holes in each breast one inch apart, worked with blue silk braid, five and a half inches long at the bottom, the top to touch the ; the front terminating at the bottom; the skirt behind, three inches deep, with double plait in each fold, and on the centre of the back, at the bottom, made with the braid, that continues round the edges, one above each hip button, the braid to continue up the side seams. The waist not to reach below the hips: and no back seam. Pocket welts, from each end, the same as the front end of the button-hole or collar. The collar the same as the undress coat, both worked with silver braid. The sleeve worked with silk braid.

**Vest:** Of white cassimere, or jean, single breasted.

**Pantaloons:** White cassimere or buck-skin for parade, dark blue cloth for service.

**Boots:** Dragoon, with tops to cover the knees.

**Stocks:** Black leather; black silk for the officers, without shewing the shirt-collar or knot.

**Spurs:** White.

**Helmet:** According to pattern; blue feather, with white top; feather nine inches long

**Buttons:** Plated bullet buttons.

**Epaulet:** Silver.

**Adjutant:** Epaulet of his grade, white plume, with blue top.

**Quarter-master:** Green plume.

**Pay-master:** Epaulet of his grade, blue plume, with red top.

**Surgeon:** The undress uniform, with black cape and cuff.

**Cloak:** Hussar, with sleeves; cape eight inches wide.

**Major-generals;** to three aids de camp, with the rank of majors; and the brigadier-generals, to two aids de camp, with the rank

Saddle: Plain; plated pummel and cantle.

Housings of field officers: Blue cloth, bordered with a double row of silver lace.

Troop officers: One row of silver lace, with three bars of lace placed diagonally from the corner of the housings, for captains; one row of silver lace, with two bars for the lieutenants; one row of silver lace, with one bar for the cornets.

Staff: According to their grade.

Medical staff: One row of lace.

Holsters: Bear-skin, double flaps.

Bridle-bit, and bridleon: Reins, black leather.

Non-commissioned officers: The same as the officers, with the exception of silk ferret, instead of lace; sergeants, to wear two white epaulets; corporals, one on the right shoulder.

Armament: Pistols, sabres, steel scabbards, buff-leather waist-belt, white plate in front, with the eagle in relief; silver sword knot.

MAY 2, 1814.

The white cord to be taken off the soldiers' jackets, and no lace or silver cord to be worn by the officers.

#### OF THE LIGHT ARTILLERY.

**Full dress:** Coatee of dark blue cloth, single breasted, three rows of buttons, nine in each; button holes worked, diagonally, with blue twist; standing collar; the height of the collar not to extend beyond the tip of the ear; two buttons; the button holes of blue twist; cuffs, blue, with three buttons placed vertically upon the sleeve; the button-holes worked with twist; pocket flaps diagonal, with three buttons, worked on the sleeve, two buttons at the waist, the skirts sloping from the hips.

**Vest:** White cassimere, or doe-skin, (for winter); plain white jean, or nain, (for summer,) single breasted, with nine yellow buttons.

**Pantaloons:** White cassimere, or doe-skin, (for parade); dark blue cloth, (for service.)

**Boots:** Hussar.

**Stock:** Black leather, ribbed.

**Spurs:** White shanks, one inch.

**Cap and ornament:** Black, seven inches high, the crown, eight and a half inches diameter; the visor, two and a half inches broad, lined with stiff leather, a gold band and tassel falling from the crown of the cap on the right side, gilt plate in front, plume white, tipped with red, length, six inches, one fourth red; cockade, black leather.

**Buttons:** Yellow, half inch diameter.

**Epaulet:** Gold bullion; strap, basket work; the field officers to wear two; a captain one, on the right shoulder; the lieutenants one, on the left.

**Adjutant:** Epaulet according to his grade, with a band of red silk, and gold fringe above the elbow, on the left arm; his plume yellow.

**Quarter-master:** Epaulet according to his grade; plume, green.

**Pay-master:** Epaulet of his grade; plume, red.

**Surgeon and mate:** Same uniform as described, except the cape, which is of black velvet; cocked hat; black plume.

**Cloak:** Hussar; blue cloth, cape eight inches large.

**Equipment:** Plain saddle.

**Housing:** Scarlet cloth, extending eight inches from the saddle, and brought to a point on the flank of the horse.

**Medical staff:** Blue housing.

**Holsters:** Bear-skin, with double flaps.

**Bridle:** Double bit, (yellow mounted) reins, martingale, &c. black leather.

**Portmanteau:** Black leather; two feet long, nine inches diameter.

**Armament:** Sabres, gilt scabbards, black belt, two inches broad, gilt plate.

## MILITIA.

of captain. The brigadier-generals shall, also, have a right to appoint their respective brigade inspectors, who shall be approved by the major-general of the division. The regimental staff shall be appointed by the colonels, respectively, to be approved of by the brigadiers: and all officers, so appointed, shall be commissioned by the governor, who shall be authorized to appoint all other officers.—(a.)

in front, with the eagle in relief; belt worn over the sash, which is red, and tied on the right side; the sabre suspended by a chain; cut and thrust swords; black scabbards, yellow mounted—(for undress,) sword-knot, gold.

Pistols: Calibre of the cavalry, yellow mounted.

Undress uniform: Long coat extending to the knee, dark blue cloth, skirts flapping from the hips, single breasted, with one row of nine buttons; the cut, fashion, and trimmings, to be the same as the full dress.

Where etiquette requires shoes, breeches, agreeable to the uniform, are to be worn with yellow knee-buckles, instead of strings; yellow buckles in the shoes, a chapeau bras, instead of the cap; no plume.

Dress of non-commissioned officers and privates: The same as that prescribed by the officers, with the exception of worsted, being substituted for gold band and tassel; sergeants to wear two yellow worsted epaulets, and red worsted sash; corporals, one epaulet on the right shoulder.

## OF THE INFANTRY.

The same as that pointed out for the officers of artillery, with the following exceptions:

The sword, of the sabre form, and with mounting, silver or plated. For the medical staff, small swords.

Epaulets: Buttons, spurs, buckles, and trimmings, silver, or plated; and caps may be worn on duty.

## OF THE RIFLEMEN.

The uniform for the non-commissioned officers, privates, and musicians, of the rifle regiments, will hereafter be as follows, viz.—A short coat of gray cloth, single breasted, flat yellow buttons, which shall exhibit a bugle surrounded by stars, with the number of the regiment within the curve of the bugle; one row of ten buttons in front, three on each sleeve, and three on each skirt, lengthwise, with blind button-holes of black twist, or braid in herringbone form.

A waistcoat of grey cloth, with sleeves of the same; pantaloons of grey cloth.

The Jefferson shoe, rising two inches above the ankle joints, and no higher.

Leather caps, with a plate, and design similar to that of the button, and short green pompon in front.

For the field, or active service, the officers will wear uniforms, like those of the privates, excepting as to quality. On other occasions, they are permitted to wear uniform of the artillery, except as to the buttons, the position of them, &c. which shall be the same with the field coat; epaulets, of gold.

Yellow mounted sabres, for officers and non-commissioned officers.

## OF THE CADETS.

Coat: Grey cloth, single breasted, standing collar, single herring bone cuff, eight buttons in front, six in rear, one on each side the collar, with one blind button hole, and one on each cuff.

Under clothes: Nankin in summer, grey cloth in winter; black stock.

Chapeau: Cockade, with gilt eagle, and loop.

Half boots and shoes.

Cut and thrust swords: In a frog belt, worn under the coat.

The buttons: Eagle impression, yellow gilt; five eighths of an inch diameter.

## D. PARKER, Adjutant-General.

(a)—1794—1st Faust, pp. 307, 308, and Sess. Acts, 1815, p. 20.

## MILITIA.

209

LIV. The brigade inspectors, whenever required by the general of the brigade, shall make a return of the militia of the brigade, to which he belongs, to the said brigadier-general; and the brigadier-general shall, whenever required by the major-general of the division, to which he belongs, make a return of the militia of his brigade, to the said major-general; and the major generals shall, whenever required by the governor, or commander in chief, make a return of the militia of their respective divisions to the said governor, or commander in chief.—(d.)

LV. No civil officer shall, on any pretence, execute any process (unless for treason, felony, or breach of the peace) an any person whatsoever, at muster, or other time, when such person shall be obliged, by law, to bear arms; nor in going to, or returning from, any muster, or place of rendezvous; or within twenty-four hours after such person shall be discharged from appearing in the regiment, company, or troop, to which he shall belong, under the penalty of twenty-one dollars and forty-three cents; and the service of any such process shall be void to all intents and purposes. And all arms and accoutrements which, by law, are required to be provided, and the troop horse of each trooper duly entered and registered with the captain of the troop, so long as said trooper shall continue in the troop, shall be exempt from all liability to be distrained, or taken, in execution, for any cause, matter, or thing, whatsoever: And in case any person shall seize, levy, or distrain, upon any such arms, accoutrements, or horse, such person shall forfeit the sum of forty-two dollars and eighty six cents, to be recovered in any court of record in this state.—(g).

LVI. The officers commanding regiments of infantry within this state, shall be authorized to permit volunteer uniform companies of infantry, or riflemen, to be raised within their respective commands, and the officers thereof shall be commissioned, if such companies shall consist, respectively, of forty effective rank and file, in uniform: And officers commanding brigades, are authorized to permit volunteer companies of cavalry and artillery to be raised within their respective commands, which shall consist of thirty effective men, in complete uniform, and to commission the officers thereof: And if such volunteer companies of infantry and riflemen shall, at any time, be reduced below thirty men, in uniform, and any such company of cavalry, or artillery, shall be reduced below twenty-four men, in uniform, and the said companies, respectively, shall not, within six months after notice given by the commanding officer of the brigade, or regiment, recruit their respective companies, they shall be dissolved, and the commissions of the offi-

(d)—1794, 1st Faust, p. 313. (g)—Ibid. p. 314.

## MILITIA.

cers forfeited: Provided always, that no beat, or district, company, shall be reduced below thirty men, by the formation of any volunteer company, or companies: And provided also, that whenever any call shall be made for the services of any volunteer company, they shall go by companies, under their own officers; but nothing herein contained shall authorize the raising of a greater portion of cavalry, artillery, riflemen, or infantry, than are now authorized by law.—(c.)

**LVII.** The governor, or commander in chief, for the time being, shall be authorized to issue blank commissions to the colonels of the respective regiments; and the said colonels shall, from time to time, as occasions may occur in their respective regiments, fill up, and deliver commissions, and make return thereof to the brigadier.—(h.)

**LVIII.** No officer of infantry, cavalry, or artillery, shall be excused from the performance of patrol duty; but every officer and private of such companies shall be liable to perform patrol service in the beat, and under the captain of such beat, within which such officer, or private resides.—(n.)

**LIX.** The officers and privates in every company of artillery, infantry, or cavalry, raised and uniformed in any militia regiment in this state, by permission of his excellency the governor, or any colonel, or commanding officer of a regiment, shall be, respectively, liable to all the fines and forfeitures imposed by law, on the officers, or privates, of any regimental, or company beat.—(a.)

**LX.** Every commissioned officer of the militia of this state, who shall be tried for, and found guilty of, disobeying the lawful order of a superior officer, shall be liable, therefor, to be cashiered by the sentence of a court martial, if the same shall be approved; and the officer be ordered to be cashiered by the commander in chief.—(b.)

**LXI.** No person liable to do militia duty, who shall be enrolled in any volunteer company of infantry, or artillery, or troop of horse, shall be exempted from doing duty in such company, or troop, unless he shall have given six months previous notice, in writing, of his intention to leave such company, or troop, to the commanding officer thereof, and shall have complied with all other legal requisitions.—(c.)

**LXII.** The commission of every captain of a troop of cavalry, or company of infantry, or artillery, who shall refuse, or neglect, to muster his troop, or company, for the space of six months in immediate succession, shall be null and void.—(c.)

**LXIII.** The captains of artillery throughout the state, shall be attached to the battalions, in which they, respectively, re-

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(c)—1815, Sec. Acts, p. 16. (h)—2d Faust, p. 149. (n)—1808, Sec. Acts, p. 53. (a)—1794, 1st Faust, p. 329. (b)—2d Faust, p. 361. (c)—*Ibid.* p. 362.

side, except the company attached to the twenty-eighth regiment, the company attached to the twenty-ninth regiment, and the company attached to the thirtieth regiment, which shall form one battalion; and the said battalion, together with the Charleston battalion of artillery, shall form one regiment, the said regiment to be commanded by a lieutenant colonel, and each of the battalions by a major.—(d.)

**LXIV.** The several artillery companies in this state, shall have the same complement of officers, as are now required by law, in the companies of artillery in the service of the United States, to-wit: each company of artillery shall consist of one captain, one first lieutenant, one second lieutenant, and one third lieutenant.—(e.)

**LXV.** It shall be lawful for the commanding officer of any company of artillery, to attach thereto, any number of free negroes, or Indians, moors, mulattoes, or mustizoes, not exceeding four, to act as pioneers, in such manner, as the commanding officer of the regiment, or battalion, to which such company shall be attached, shall think fit, and direct; the said pioneers to be clothed in hunting shirts and overalls, and equipped with the usual accoutrements for pioneers, except swords, bangers, and bayonets.—(g.)

**LXVI.** No trumpeter, or musician, being a negro, mulatto, or mustizo, or other person of color, attached to any corps of cavalry, shall be permitted to be armed with any offensive weapon, unless in cases of alarm, or of service on detachment.—(h.)

**LXVII.** It shall be lawful for any major of cavalry, to attach to the squadron under his command, with the consent of the commanding officer of the regiment, of which such squadron shall be a part, any number of rifle carbineers, not exceeding twelve to a troop, who shall also be armed as troopers, in such way, and manner, as he shall think fit, and direct.—(m.)

**LXVIII.** No regiment of cavalry shall consist of more than six troops, nor less than four, nor each troop of more than sixty-four rank and file.—(n.)

**LXIX.** To each squadron there shall be one major, and each regiment shall be commanded by a lieutenant colonel.—(o.)

**LXX.** The cavalry shall meet in troop, at least six times in each year, and at such places as the commanding officer of each troop shall direct. And the brigadiers shall, in their respective brigades, direct the mode of uniform for the cavalry of his brigade.—(p.)

**LXXI.** The brigadier general of each brigade shall be authorized, whenever the regiment of horse in his brigade is not

(d)—2d Faust p. 141, and Sess. Acts, 1807, p. 41; 1818, p. 56; 1819, p. 34.  
 (e)—1830, Sess. Acts, p. 7. (g)—2d Faust, p. 364. (h)—Ibid. p. 365.  
 (m)—Ibid. p. 363. (n)—2d Faust, p. 139. (o)—Ibid. p. 140. (p)—Ibid.  
 : p. 141.

## MILITIA.

complete, to fill up the same, by authorizing proper persons to raise the necessary number of troopers, and empowering the captains of the respective troops in their regiments to enrol men, who are not obliged to do militia duty, but are willing to enrol themselves in such troops, and to turn out with them properly uniformed and accoutred, when called into actual service; And the said brigadiers shall distribute the troops in their regiments, into squadrons: And all volunteers for the corps of cavalry, shall be limited to their respective brigades, except otherwise ordered by the commander in chief.—(c.)

LXXII. The commander in chief for the time being, shall be authorized, in case of invasion, or other emergency, when he shall judge it necessary, to order out any portion of the militia of the state, to march to any part thereof, and continue not more than three months, at any one time, and until relieved, for which he shall make timely provision; and likewise, at his discretion, in consequence of an application from the executive of any of the United States, on an invasion, or insurrection, or an apprehension of an invasion of such state, to order any number of the militia, not exceeding one third part thereof, to such state: Provided that they be not compelled to continue on duty out of the state, more than two months at any one time; (o) and that, upon any transgression, or offence, of any militia man, officer, or private, against the rules and regulations of the federal army, the cause shall be tried and determined by a court martial of the militia of this state: And it shall be in the power of the governor, or in case of his absence, of the commanding officer of the militia of this state, to mitigate, suspend, or pardon, any punishment, to which any militia man may be sentenced by a general court martial.—(g.)

LXXIII. The officers, non-commissioned officers, and privates, of the infantry, artillery, cavalry, and riflemen, of the militia of this state, when called into service, and embodied by the authority of the laws thereof, and whilst remaining therein, shall be entitled to the same pay, rations, and forage, with the regular troops of the United States, to commence from the day of their appearing at the places of battalion, regimental, or brigade, rendezvous; allowing to each officer, non-commissioned officer, musician and private soldier, a day's pay and rations for every fifteen miles from his home, to such place of rendezvous, and the same allowance for travelling home from the place of his discharge.—(q.)

LXXIV. Whenever the militia, or any part thereof, shall be in actual service, and embodied, in consequence of being ordered out by the commander in chief, within, or without, the state,

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(c)—1797, 2d Faust, p. 140. (o)—1813, Extra Sess. Acts, p. 6. (g)—1794, 1st Faust, p. 310. (q)—1813, Extra Sess. Acts, p. 7-8.

They shall be subject to the same rules and regulations, as the troops of the United States shall be subject to, at the time the militia shall be so ordered out; and the said rules and articles shall be proclaimed, with due solemnity, at the head of such detachment, as soon after their being assembled as possible.—(a.)

LXXV. Whenever it shall happen, that any non-commissioned officer, or private, shall be absent, when any non-commissioned officer shall call to warn him to appear at rendezvous, a notice, in writing, signed by such non-commissioned officer, and left at the usual place of his abode, shall be deemed a sufficient warning.—(a.)

LXXVI. Whenever a militia man shall have been duly summoned, or ordered, to appear at the rendezvous appointed, and shall not appear, in such case he may be fined in a sum not exceeding five hundred dollars, and the amount of his taxes last paid to the state, at the discretion of a court martial, to be composed of officers of the detachment ordered out, if it be convenient, if not convenient, of officers of the brigade, to which the delinquent shall belong, or of any other officer of the militia of this state, at the discretion of the commander in chief; who shall have authority to order the said courts, in conformity with the usage of the army of the United States; and, in addition to the fine, which the said court martial may inflict on any person, who may subject himself to the aforesaid penalty, the said court martial may, at their discretion, sentence any delinquent to imprisonment in the common gaol, for a term not exceeding three months: Provided that no fine, or imprisonment, shall be imposed on any delinquent, until he shall have been summoned to appear before a court martial, to shew cause, why such fine, or imprisonment, should not be imposed.—(a.)

LXXVII. In all cases when the militia shall be so ordered out, volunteers and substitutes shall be accepted in the place of those so ordered out, under the conditions, limitations and restrictions already established by law.—(b.)

LXXVIII. All free persons of color, pioneers, fatigue men, musicians, trumpeters, buglers, drummers, and fifers, attached to, or liable to do duty in, any company, troop, or corps, shall be entitled to the same pay, and be liable to the same fines and penalties, and subject to the same rules and regulations, as the militia of this state are liable to.—(c.)

LXXIX. No civil officer whatsoever, shall, on any pretence, execute any process (unless for treason, felony, or breach of the peace,) on any person whomsoever, when such person shall be called out into service, and embodied by the executive authority of this state, in pursuance of the laws thereof, or within

(a)—1812, Extra Sess. Acts, pp. 7-8. (b)—Ibid. p. 6. (c)—Ibid. p. 11.

## MILITIA.

thirty days after such person shall be discharged from the service, upon which he shall have been so called out, under the penalty of twenty dollars; and the service of any such process shall be void to all intents and purposes whatsoever; and all suits, which may be pending against such persons, shall stand, and be continued over, in the same manner, as if they had been regularly postponed by affidavit.—(d.)

LXXX. The estate of every person whatsoever, when such person shall be called out, and embodied, as aforesaid, shall be free and exempt from levy, distress, or sale, by virtue of any legal process whatsoever, from the time such person shall be so called out, and until thirty days shall elapse, after such person shall be discharged from such service; and every person making any such levy, distress, or sale, as aforesaid, shall be fined in the sum of twenty dollars; and such levy, distress, or sale, shall be void to all intents and purposes.—(c.)

LXXXI. All fines, which shall be imposed on any person for not appearing at any place of rendezvous, when called into service, in pursuance of the laws of this state, shall be collected in the following manner: The president of every court martial shall make a list of all the persons fined, designating the company to which they belong, and the sum imposed as a fine on each person, and draw his warrant, under his hand and seal, directed to any sheriff of any district, as the case may be, thereby commanding such sheriff to levy such fine or fines, together with his costs, of the lands, tenements, goods, and chattels of such delinquent; and every such sheriff, to whom such list and warrant shall be directed and delivered, shall execute the same by levying and collecting the said fines, as aforesaid, and shall make return thereof, within forty days from the receipt of such warrant, to the president who issued the same: and should the sheriff not be able to find any lands, tenements, goods, or chattels, of which to levy the said fine or fines, then he shall take the body of the said delinquent, and commit him to gaol, and there keep him, until the said fine, or fines, shall be paid, or until double the time shall have elapsed, for which the delinquent would have served, had he joined the militia so ordered out; and the said sheriff shall be entitled to the same fees for collecting the said fines, and subject to the same penalties for neglect, as are allowed and provided in similar cases; and all fines, so collected, shall be paid into the hands of the paymaster of the regiment, to which the delinquents shall, respectively, belong.—(q.)

LXXXII. The commander in chief, for the time being, may, at his discretion, aid and assist the citizens of any portion of this state in erecting temporary works and means of protection, and build such redoubts, and establish such military posts, as

(d)—1813, Extra Sess. Act 6. (c)—1813, Ibid. p. 7. (q)—Ibid. p. 9.

he shall deem necessary, and best calculated to promote the common defence.—(q.)

LXXXIII. The commander in chief, for the time being, shall have authority to remove to some temporary place of safety and deposit, such portion of the arms, ammunition and military stores, at any time deposited in the public arsenals of the state, as circumstances may appear to require; and when necessary, in his opinion, to provide and furnish sufficient guards to protect the public arsenals, until it be found expedient to call out into public service, detachments of the militia, on whom this duty may, in part, devolve. And it shall also be his duty, from time to time, to examine, or cause to be examined, by some proper officer, the situation of the several arsenals throughout the state, to require security from the arsenal keepers, and to remove them for negligence, or other improper conduct, or incapacity of performing the duties devolving on them, as such, and to appoint, in cases of removal, other persons to supply the vacancies thereby occasioned.—(q.)

LXXXIV. It shall be lawful for any major-general, or brigadier-general, or commanding officer of a brigade, or lieutenant-colonel, or commanding officer of a regiment, when, and as often as any invasion may happen, to order out the militia under their respective commands, for the defence of the state, giving notice of such invasion, and every circumstance attending the same, as early as possible, to their immediate commanding officers; by whom such information shall be immediately transmitted to the governor or commander in chief, by express; the expense of which shall be immediately paid: and in case of insurrection, the commanding officer of the regiment, or battalion, within the limits of which such insurrection may happen, shall immediately assemble his regiment, or battalion, under arms; and having transmitted information thereof to the commanding officer of the brigade, and to the major-general of the division, and to the governor or commander in chief, shall proceed to take such measures to suppress such insurrection, as to any three of the judges, or justices of the district, in which such insurrection shall happen, shall appear most proper and effectual: and if any person be wounded, or disabled, while in actual service, in opposing any invasion, or insurrection, or in suppressing the same, he shall be taken care of, and provided for at the public expense, without regard to the rank such person may hold.—(h.)

LXXXV. If the governor, or commander in chief, for the time being, receive advice from any person, or persons, in authority in this state, or other credible person, or persons, in foreign parts; or if he shall receive any information, on oath,

(q)—1813, Extra Sess. Acts, pp. 11-12. (h)—1794, 1st Faust, p. 311.

from any credible person within this state, that any foreign enemy, or armed force, intend suddenly to invade the state; or if any dangerous insurrection, or rebellion, be actually raised within this state, which cannot be suppressed by one single company, he shall have power to raise and assemble such, and as many, of the divisions, brigades, regiments, battalions, troops, or companies, of the militia of the state, as he shall think sufficient to suppress and repel such invasion, rebellion, or insurrection, as may happen: and for the more effectual execution thereof, he shall make and publish an alarm throughout the whole state, by firing six guns, two at a time, at three minutes distance; or by sending orders, or expresses, to the general officers, field officers, and other officers of the militia, to raise their several and respective divisions, brigades, regiments, battalions, troops, and companies, or such part of them, as shall be ordered to march and rendezvous at such proper times and places within the state, as the said governor or commander in chief, for the time being, shall think fit: and the said alarms shall be carried on throughout the state, by all the commissioned officers of the militia, by firing three small arms at convenient intervals, from place to place, and by speedily raising their several corps, and taking all other proper and effectual measures to give notice of the motion of the enemy, and forwarding, with the utmost expedition, all necessary information to the governor, or commander in chief; and by putting in execution all such orders, as they shall receive from their superior officers.—(m.)

- LXXXVI. On sight, or information, of an enemy appearing, or of mischief done by an enemy, from any white man of credit, who hath seen the same, of the credit of which informer, the officer, to whom the information shall be given, shall be the judge, an alarm shall be made by any commissioned officer, by firing three small arms: And every alarm shall be carried on by all persons hearing, or having knowledge of, the same, by firing three small arms distinctly; and the officer who fired the alarm, shall assemble the corps by beat of drum, or by ordering them to warn their next neighbors, or otherwise, till the corps shall be got together; and the commanding officer of such corps shall, with all convenient speed, dispatch two expresses, one to the governor, or commander in chief, and the other to the next field officer of the regiment, to which the said corps belongs, with an account of the cause of the alarm so made; upon which notice, the said field officer shall dispatch two expresses with an account of the same, one to the brigadier of the brigade, and the other to the major-general of the division; and the field officer, who shall receive information, as aforesaid, shall have power to

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(m)—1794, 1st Faust, p. 322.

assemble any number of men, of the battalion, or regiment, to which he belongs; to march to the assistance of any of the inhabitants of the state, who are in danger.—(n.)

LXXXVII. In time of alarm occasioned by any insurrection, rebellion, or invasion, all field officers, and captains of companies, shall have power, by themselves, or their warrants, to any inferior officer, or soldier, to impress any arms, ammunition, provisions, horses, waggons, carts, boats, canoes, periaugnas, and vessels with their furniture, or whatever other thing they shall want, or have need of, for the service of the state: Provided, that all such things so impressed, be, by the said officers, brought before three, or more, indifferent persons, being freeholders, to be appraised and valued before they are disposed of for the public service; and such appraisement being made, the officer shall give a receipt for the same, if he conveniently can; and the said officer shall cause his clerk to enter the same in a book to be kept for that purpose; and the said appraisers shall ascertain any loss, or damage, that may happen to the things so impressed, or allow a competent hire for the same, when returned to the owner, as the case shall require, and shall give such appraisement, under their hands, to the owner: And the captain, or commanding officer of each company, after such alarm shall be over, and before such company shall be discharged, shall order so many men, as he shall think fit, to carry the several things by him impressed, to the respective owners, who, upon the delivery of the same, shall give a receipt.—(a.)

LXXXVIII. If any person liable to bear arms, shall, in time of alarm, neglect, or refuse, to use his utmost endeavors to convey and communicate the said alarm, or notice of an enemy's approach, such person shall forfeit and pay a sum not exceeding two hundred and fourteen dollars and thirty cents; and if any person, after he has notice of such alarm, shall not forthwith repair, completely armed and accoutred, with all convenient speed, to the place where the regiment, troop, or company, to which he belongs, shall be ordered to rendezvous, every such person shall forfeit a sum not exceeding eighty-five dollars and seventy cents; and in case the company, or troop, to which such person belongs, shall actually engage and fight with the enemy before such person shall appear in the said regiment, troop, or company, in every such case, the person not appearing, as aforesaid, shall forfeit a sum not exceeding one hundred and seventy-one dollars and forty-five cents.—(b.)

LXXXIX. Every commissioned officer in the militia shall have power, when occasion shall require it, to assemble, arm, and raise, any number of men belonging to his corps, and if need be, to give notice, and call to their aid, the officers and

(n)—1794, 1st Faust, p. 323; (a)—Ibid. p. 327; (b)—Ibid. p. 324.

men of any adjacent corps, to disperse, suppress, kill, destroy, apprehend, take, or subdue, any pirate, sea-rover, Indian, or other enemy, who shall, in a hostile manner, hurt, or attempt to hurt, any of the inhabitants of this state, in their persons, or possessions; or any company of slaves, who shall be met together, or who shall be lurking in any suspected place, where they may do mischief, or who shall have absented themselves from the service of their owners: And in case any person liable to bear arms, shall, on such occasions, neglect, or refuse, to appear, upon notice given by any commissioned officer of the troop, or corps, to which he belongs, or appearing, shall not attend and obey the said officer, he shall, for every such refusal, or neglect, forfeit the sum of eight dollars and fifty-five cents.—(c.)

XC. In times of invasion, or insurrection, when it shall be found necessary to march the several regiments, troops, or companies, or any of them, out of their proper parishes, counties, or districts, one fourth part, at least, of every company in this state, shall stay, and remain, in the respective parishes and divisions, to which they belong; and shall be formed into patrols, under such officer, as the commissioned officers of the company shall appoint, under whose command, respectively, they shall continue, until the rest of the company shall return to their habitations, and be discharged from bearing arms. And the patrols so formed, shall be on constant duty to ride and patrol, and guard the plantations, and keep the slaves within their several parishes and divisions, in good order, and shall place proper guards, watches, and sentinels, at proper and convenient places, to give notice of danger, or for the more speedy conveying of advice, and intelligence, to the governor, or commander in chief, or any army raised and assembled by his command; and in case any person obliged to serve in such patrol, shall refuse or neglect to ride patrol, or to watch, stand sentinel, or to keep guard, or shall refuse to obey the lawful commands of any person appointed to command such patrol, every person so offending shall forfeit a sum not exceeding sixty-four dollars and twenty-five cents.—(c.)

XCI. In times of invasion, rebellion, or insurrection, when any person shall receive orders to march out of his parish, county, division, or district, the captain, or other commanding officer, who shall be present, shall cause the names of all the persons, who are entered, enlisted, and enrolled, in the muster roll of such company (officers excepted) to be written down on small scrolls of paper, which shall be folded up and put into a hat, and shaken together; and the clerk, or sergeant, of the said company, shall draw out of the hat, the names of so many persons, as will not exceed three-fourth parts of the said company; and the

persons, whose names shall be so drawn, shall be obliged to march according to such orders, as shall be given by the governor, or commander in chief; and the rest, whose names shall be left in the hat, shall stay in their respective parishes and divisions, and do patrol duty, as before directed; but no officer of any company shall be excused from marching with the company, for which he is appointed, unless by particular orders from the governor, or commander in chief; and in that case, the officer so directed to stay, shall be the commanding officer of the part of the company left for patrol duty.—(a.)

XCI. If any person, whose name shall be drawn as aforesaid, and be thereby obliged to march out of his parish, or division, can provide an able-bodied man, to be approved by a majority of the officers of the company, to which he belongs, completely armed and furnished according to law, every such person shall be at liberty so to do; and upon producing and sending out such able-bodied man in his stead, he shall be excused from going out, or marching, in person, but shall, nevertheless, be obliged to do patrol duty, in his district: And in case of disobedience, neglect, or refusal, to ride in such patrol, he shall be liable to all the pains, penalties, and forfeitures inflicted by law.—(a.)

XCI. The commanding officer of each company, shall lodge, in some convenient and secure place, for public use, all provisions and ammunition impressed by him, or by virtue of his warrant, that shall remain unexpended after an alarm; and shall keep a particular account therof.—(b.)

XCV. Whenever any part of the cavalry shall be called into the actual service of this state, it shall be the duty of the brigade-inspector to call to his assistance, two of the freeholders of the district, where each horseman may reside, who, together with the said brigade-inspector, shall, on oath, appraise the horse of each horseman, immediately before the time of going into such service, and enter such appraisement in a book to be kept by him for that purpose; and the said cavalry shall receive the same indemnification for loss of horses, or otherwise, and be under the same regulations and restrictions, as may be established in like cases, in the militia in the service of the United States.—(c.)

XCV. When any part of the militia of this state, shall be called into service, within the state, by the authority of the laws thereof, each commissioned officer shall be entitled to the same pay and rations, as are allowed to officers of the same rank in the federal army, by the laws of the United States; the pay of a sergeant, drum major, and fife-major, in lieu of all other

(a)—1794, 1st Faust, p. 327. (b)—Ibid, p. 328. (c)—1797, 2d Faust, p. 141.

## MILITIA.

demands, shall be eight dollars per month; the pay of a corporal, bugler, trumpeter, drummer and fifer, in lieu of all other demands, shall be seven dollars per month; and the pay of a private, in lieu of all other demands, shall be six dollars and fifty cents per month, besides rations; to be provided for in the tax-bill of the year, in which the service shall be performed.—(a.)

XCVI. If any person shall be sued, molested, or prosecuted, for any thing done, in pursuance of the direction of this act, he may plead the general issue, and give the special matter in evidence; and in case the plaintiff shall suffer a discontinuance, enter a *nolle prosequi*, suffer a non suit, or verdict, or judgment shall pass against him, such plaintiff shall pay to every defendant, that shall be acquitted, or for whom judgment shall pass, double costs of suit.—(b.)

XCVII. Every officer, whose duty it shall be, to enforce the militia laws of this state, who shall wilfully neglect so to do, shall, on conviction, be cashiered; and courts martial shall be ordered, as in other cases.—(c.)

XCVIII. The adjutant-general's department shall hereafter consist of one adjutant and inspector-general, with the rank of a brigadier-general; and five division or deputy adjutant generals, with the rank of lieutenant colonels, one in each division. The quartermaster-general's department, shall consist of one quartermaster-general, with the rank of colonel, five division, or deputy quartermaster-generals, with the rank of major; and ten brigade, or assistant, deputy quartermaster-generals, with the rank of captain: one division quarter master being taken for each division; and one brigade quartermaster, for each brigade. There shall be to each division of the state, one division, or assistant, inspector-general, with the rank of lieutenant-colonel; and to each brigade, one assistant deputy inspector-general, with the rank of major. There shall also be, to the militia of the state, one judge advocate-general, with the rank of lieutenant-colonel; and, to each brigade, there shall be a brigade, or deputy judge advocate-general, with the rank of major.—(d.)

XCIX. There shall be one commissary-general of purchases, with the rank of lieutenant-colonel; one commissary-general of issues, with the rank of lieutenant-colonel; one pay-master general, with the rank of lieutenant-colonel; one physician and surgeon-general, with the rank of lieutenant-colonel; one apothecary-general, with the rank of major, and one brigade chaplain, to each brigade.—(d.)

C. The governor, and commander in chief, shall be authorized to fill all vacancies, which shall hereafter occur, in any of the abovementioned offices.—(d.)

(a)—1st Faust, p. 312.—See act of Congress, 1812-13. (b)—*Ibid.* p. 320.

(c)—1815, Sess. Acts, p. 15. (d)—*Ibid.* p. 20.

**C1.** It shall be the duty of the governor, or commander in chief, to prepare the general regulations, better defining and prescribing the respective duties and powers of the several officers before mentioned, which shall be respected and obeyed, until altered and revoked by the same authority.—(a.)

(a)—1815, Sess. Acts, p. 21.

#### GENERAL ORDERS.

*Head-Quarters, Center-Hall, May 20th, 1816.*

Extract from an "Act for the organization of the staff of the militia of South Carolina, and for other purposes therein mentioned."

"Sec. 5th. And be it further enacted by the authority aforesaid, That it shall be the duty of the governor and commander in chief, and he is hereby authorized to prepare general regulations better defining and prescribing the respective duties and powers of the several officers before mentioned; which shall be respected and obeyed, until altered and revoked by the same authority; and the said general regulations shall be laid before the legislature at their next meeting."

In obedience to the provisions of the act, from which the above extract is taken, the commander in chief orders, that the following general regulations be observed by officers on the staff of the state; and enforced by all superior officers thereof:

#### ADJUTANT AND INSPECTOR GENERAL.

The provisions, which have been enacted by the legislature, prescribing the duties of the adjutant-general, will be obeyed, so far as they are applicable, by the adjutant and inspector general. In addition to these, his appropriate duties embrace instruction of the troops, comprehending their arrangement for battle; distribution of orders; returns of the militia, generally; correspondence in relation to military affairs; and, when in the field, details of service, of every description. He is to be considered as attached to the suit of the commander in chief, not subject to the orders of any other, and will be obeyed by all the officers of the adjutant general's, and of the inspector-general's department: Orders signed by him, "by order of the commander in chief," will be obeyed by all the military, whether of the line, or on the staff.

#### DIVISION, OR DEPUTY, ADJUTANT-GENERAL.

His duties are to be inferred from those prescribed for the chief of his department. He is of the suit of the major-general, commanding the division, to which he has been appointed, and will be subject to his orders, not contravening those of the commander in chief.

#### DIVISION, OR DEPUTY, INSPECTOR-GENERAL, BRIGADE, OR ASSISTANT DEPUTY INSPECTOR-GENERAL.

In addition to those duties, which result, the former, from being attached to the suit of the major-general, and the latter to the brigadier-general, and obeying, respectively, the orders of each, not contravening those of the commander in chief, they are charged with mustering and inspecting of troops, their arms and equipments; superintending the police of the camp, and of the march; selecting places of encampment, and laying out the same; posting guards, and examining prisoners and deserters.

#### QUARTERMASTER-GENERAL.

His duties comprise quartering and transporting troops, and their provisions; safe-keeping, and transporting military materials; superintendance of arsenals, magazines, barracks, and forage in deposit; opening roads; building and repairing bridges for military purposes. He is attached to the suit of the commander in chief, subject only to his orders; and will be obeyed by all officers of his department accordingly.

## MORTGAGES.

WHEN the same lands shall be mortgaged at divers times, the debts meant to be secured by such mortgages, shall be paid in the order in which the same are recorded, agreeably to law.—(c )

### DIVISION, OR DEPUTY, QUARTER-MASTER-GENERAL. BRIGADE, OR ASSISTANT DEPUTY, QUARTER-MASTER GENERAL.

The duties prescribed to the quarter-master-general, fix those of his deputies. They will obey his orders touching the duties of the department. They are attached, the former to the suite of the major-general, and the latter to the brigadier-general, and will receive the orders of each respectively.

### BRIGADE-MAJOR.

The duties, which have heretofore been performed by this officer, were sometimes such as do not properly belong to him, and have been required of him principally, because the proper officers had not then been authorized by law.—He is therefore exempted from such, as are prescribed for other officers on the staff. His appropriate duties are to the brigade, what those of the adjutant are to the regiment, and are sufficiently established by usage. He is attached to the suit of the brigadier-general, commanding the brigade, to which he has been appointed, and will obey his orders.

### COMMISSARY-GENERAL OF PURCHASES.

Charged with purchasing all military materials, munitions of war, medicine, and surgical instruments. He is attached to the suit of the commander in chief, and is subject only to his orders.

### COMMISSARY-GENERAL OF ISSUES.

Intrusted with purchasing, and procuring otherwise, subsistence, fuel, forage, and straw, for bedding: all which are to be delivered over to the quarter-master-general, under such regulations as may be prescribed. He is attached to the suit of the commander in chief, and will obey only his orders.

### PAYMASTER GENERAL.

Intrusted with the pay of the militia: attached to the suit of the commander in chief, and subject only to his orders.

### PHYSICIAN, AND SURGEON-GENERAL.

Charged with the government of hospitals, and regulating the duties of surgeons, and surgeons' mates: attached to the suit of the commander in chief, and subject only to his orders.

### APOTHECARY-GENERAL.

Charged with receiving from the commissary-general of purchases, and distributing medicine, and surgical instruments. He will receive his orders through the physician, and surgeon-general, and only obey him.

Officers attached to the suits of major-generals, and brigadier-generals, are required to attend the reviews, and exercise of their respective regiments, brigades, and divisions, and brigade encampments. They are subject to, and required to conform to, the rules and usages of military life: they may be arrested for offences against these, or inability to perform the duty required of them. They shall be tried by courts-martial, composed of officers of the line, and on the staff, or of the latter, wholly. In every case, there shall be on the court, not less than two offices, of equal rank to the officer to be tried.

II. No mortgagee shall be entitled to maintain any possessory action for any real estate mortgaged, except where the mortgagor shall be out of possession, even after the time allotted for the payment of the money secured by such mortgage, is elapsed; but the mortgagor shall still be deemed owner of the land, and the mortgagee as owner of the money due; and shall be entitled to recover satisfaction for the same, out of the land mortgaged.—(c.)

III. The mortgagee may lawfully take from the mortgagor a release of the equity of redemption of the lands mortgaged.—(d.)

IV. The mortgage of negroes, goods, or chattels, which shall be first recorded, shall be taken and adjudged to be the first mortgage.—(g.)

V. If there be more than one mortgagee at the same time, of the same lands and tenements, negroes, goods, or chattels, the several mortgagees, who have not registered, or recorded their mortgages, their heirs, executors, administrators, or assigns, shall have power to redeem any prior mortgage, or mortgages, recorded, upon payment of the principal debt, interest, and costs of suit, to such prior mortgagee or mortgagees, their heirs, executors, administrators, or assigns.—(h.)

VI. If any register, or his deputy, or secretary, or his deputy, shall certify under his hand, that no sale, conveyance, or mortgage, of any particular parcel of lands, or tenements, or any particular negroes, goods, or chattels, by any particular person, is recorded in his office, when, at the same time, there

#### JUDGE-ADVOCATE-GENERAL. BRIGADE JUDGE-ADVOCATE-GENERAL.

The former is attached to the staff of the commander in chief, and is subject only to his orders; the latter will obey the orders of the chief of the department, the major-general of his division, and the brigadier-general of his brigade. They are to be employed on courts-martial, for the trial of persons, other than defaulters from musters established by law, and where special fines are imposed by law. They are not required to attend on other military occasions, except when specially ordered.

The rules and regulations for the government of the staff of the United States' Army, dated "War Office, May 2, 1814," and published with the army register for 1815, will determine the manner of executing these duties. Between the rules and regulations for the staff of the army of the United States, and that of the state, there should be no discrepancy. Those, which have been published by the departments of war, have resulted from the labors of the highest military authority in the nation, and having been corrected by practice, will govern within this state.

*By order of the Commander in Chief,*

JOHN B. EARLE, Adjutant and Inspector General.

N. B. There shall be no precedence among the departments. Contests concerning rank, which arise from the sameness of dates in commission, shall be settled by lot.

Officers of the line may hold commissions on the staff, but no staff officer shall hold two staff appointments at the same time.—*Miller,*

(c)—1791, 1st Faust, p. 65. (d)—1797, 2d Faust, p. 153. (g)—1693, P. L. p. 4. (h)—1698, P. L. pp. 3-4.

## OFFICE.

is such a record, such register, or his deputy, or secretary, or his deputy, shall forfeit and pay to the person, who made inquiry, and is damaged by reason of such false certificate, all his damages and costs of suit, which he shall sustain by reason of any second mortgage.—(h.)

VII. Every master mechanic, handcraftsman, and artificer, who shall erect, improve, or repair any building whatsoever, shall have a legal lien upon the building so erected, improved, or repaired, for the amount justly due him for the erection of such building, improvement, or repairs: Provided, a memorandum, or agreement in writing, in nature of a contract, be signed in the presence of one, or more witnesses, by the parties to such contract, and the proprietor of the premises, (or some other person lawfully authorized in writing by them), on which such building, improvement, or repairs, were erected, or done; which contract, or agreement, shall contain a particular account of the work to be done, the materials to be furnished, and a general description of the said premises, and be recorded in the office of the register of mesne conveyances for the district, in which such buildings are erected, or the improvements, or repairs, may be done: Provided, that such lien shall, in no case, be for a greater sum, than the just value, which such building, improvement, or repairs, shall give to the lands, upon which the same may be erected: And provided also, that no such lien shall take effect, or commence, before the date of the recording of such contract, or memorandum, executed in manner and form aforesaid; nor shall such lien, in any case, ever continue, or remain of force for a longer period, than three years after the date thereof: and that nothing herein contained shall be construed to impair any prior lien on such building, so to be erected.—(k.)

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## OFFICE.

If any person shall bargain, or sell, any office, or deputation of any office, or offices, or any part or parcel of any of them; or receive, have, or take any money, fee, reward, or other profit, directly, or indirectly; or take any promise, agreement, covenant, bond, or assurance to receive, or have any money, fee, reward, or other profit, directly, or indirectly, for any office, or offices, or the deputation of any office, or offices, or any part of any of them, or to the intent that any person should

(h)—1698, P. L. pp. 3-4. (k)—1816, Sess. Acts, pp. 19.

have, exercise, or enjoy any office, or offices, or the deputation of any office, or offices, or any part of them, which office, or offices, or any part of them, shall concern or touch the administration, or execution, of justice, or the receipt, control, or payment, of any money into the public treasury, or the surveying of any vacant and unappropriated lands, or which shall touch or concern any clerkship in any court of record, every such person, so bargaining, or selling, any of the said offices, or deputations of offices, or taking any money, fee, reward, or profit, for any of the said offices or deputations, or any part of them, or taking any covenant, promise, bond, or assurance, for any money, reward, or profit, to be given for any of the said offices, or deputations of offices, or any part of them, shall not only lose and forfeit his right, interest, and estate, which he may then have in, or to, any of the said offices, or deputations, or any part of them, or of, in, or to, the gift, or nomination of any of the said offices, or deputations, but every person, so giving, or paying, any sum of money, reward, or fee, or making any promise, agreement, or assurance, for any of the said offices, or deputations of offices, or any part of them, shall, immediately upon the same fee, money, or reward, given or paid, or upon any such promise, covenant, bond, or agreement, had, or made for any fee, sum of money, or reward, to be paid, as aforesaid, be adjudged a disabled person in law, to all intents and purposes; to have, occupy, or enjoy, such office and deputation, or any part thereof, for which such person shall so give, or pay, any sum of money, fee, or reward, or make any covenant, promise, bond, or assurance, to give, or pay, any such sum of money, fee, or reward.—(a.)

II. Every bargain, sale, promise, bond, agreement, covenant, or other assurance, given, or executed, for the sale of any office, or deputation of any office, or any part of any of them, as before specified, shall be void to, and against, him and them, by whom any such bargain, sale, bond, promise, agreement, covenant, or other assurance, shall be had, or made: Provided, that if any person offend, in any thing, contrary to the tenor and effect of this act, all judgments given, and all other acts executed, and done, by such person so offending, by authority, or color of the office, or deputation, which ought to be forfeited by the person so offending, after the said offence so committed, or done, and before the offender shall be removed from the exercise, administration, and occupation, of the said office, or deputation, shall, notwithstanding, be and remain good and sufficient in law, to all intents, constructions, and purposes, in like manner, as if this act had never been made.—(a.)

## OFFICE.

III. It shall be lawful for any two justices, one whereof being of the quorum, to administer to any person the oath, or oaths, of office, which may be required by law, to be taken by such person.—(a.)

IV. It shall not be lawful for any judge, attorney-general, commissioner of the treasury, register of mesne conveyances, secretary of state, or surveyor-general, to leave this state for any space of time exceeding thirty days, without permission first had and obtained from his excellency the governor, or commander in chief for the time being; and if any of the said officers shall leave the state without permission obtained, as aforesaid, he shall incur a forfeiture of office, and the governor or commander in chief, shall proceed, with the advice and consent of the privy council, to fill up the vacancy during the recess of the legislature.—(b.)

V. When any of the said officers shall be desirous of leaving the state for a longer time than thirty days, he shall apply to his excellency the governor for permission to do so; and the governor shall have power to grant permission for such reasonable absence, as may be consistent with the public interest, on account of sickness, or any other proper cause suggested by the applicant.—(c.)

VI. Any of the said officers shall be at liberty, at proper times, when the same can be done without prejudice to the interests of the state, to leave the same for any space of time not exceeding thirty days, without such permission first obtained.—(c.)

VII. Whenever permission to leave the state shall be granted to any of the aforesaid officers, by the governor, an entry of such permission shall be made in the journals of the council.—(d.)

VIII. The sheriff of Charleston district, the prothonotary of the court of common pleas and general sessions, and the master in equity, shall, weekly, or monthly, deposit, for safe keeping, the monies, which they may receive in their respective official characters, whether the same may belong to the public, or to an individual, or individuals, in the Bank of the State of South-Carolina (o) only; and it shall be the duty of the officer depositing such monies, to express to the proper officer of the bank, for whom, and on whose account the said monies are deposited. And after depositing such monies in the said bank, it shall not be lawful for either of the said officers to draw any part thereof out of the said bank, except by order of court, or by checks expressing in favor of whom, and on what account the said monies are drawn: nor shall it be lawful for either of

(a)—1800, 21 Faust, p. 360. (b)—1st Faust, p. 168, and P. L. p. 475.—  
(c)—1791, 1st Faust, p. 169. (d)—1789, P. L. p. 476. (o)—Sess. Acts, 1812, p. 58.

the said officers to draw out of the said bank any part of the monies deposited, as aforesaid, except for the purpose of immediately applying the same to the payment of him, her, or them, who may be entitled to receive the same:—(g.)

IX. On failure to comply with each of the provisions contained in the section immediately preceding, every public officer so failing, on conviction thereof in any court of competent jurisdiction, shall, for every offence, forfeit and pay the sum of one thousand dollars; one half of which shall go to the informer, and the other half shall be paid into the treasury in aid of the revenue of the state.—(h.)

X. No payment of money shall be made by any public officer in this state, to either of the treasurers, in any other manner, than by a check, or draft, upon the bank of the State of South Carolina, or its branches, which may be nearest to the treasury, so as to make it indispensably necessary for such public officer to deposit his money in such bank, or its branches, previous to his making such payment.—(e.)

XI. The following officers shall hereafter be elected by joint ballot of both branches of the legislature, and shall, respectively, hold their offices for the term of four years, and until another election, viz: attorney-general, solicitors, tax collectors, ordinaries, clerks of the courts of sessions and common pleas, registers, masters and commissioners of the court of equity, commissioners of locations, and registers of mesne conveyances; and, in all joint ballots for the said officers, a majority of all the votes given on such joint ballot, shall be necessary to constitute an election.—(a.)

XII. The comptroller-general shall be elected, as heretofore, for two years, but after having served four years in succession, shall not be re-eligible to that office, till after the expiration of two years.—(b.)

XIII. All the officers mentioned in the two preceding sections, except the comptroller-general, shall go out of office on the first day of December, in the year of our lord one thousand eight hundred and sixteen.—(c.)

XIV. The attorney-general, before he enters upon the duties of his office, shall execute a bond, with two good sureties, in the penal sum of ten thousand dollars, to the state of South-Carolina, for the faithful discharge of the duties of his office; the solicitors, before they enter upon the duties of their office, shall, respectively, give bond with two good sureties, to the state of South-Carolina, in the penal sum of five thousand

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(g)—1806, Sess. Act, p. 41. (h)—Ibid, p. 43. (e)—1816, Sess. p. 60. (a)—1812, Ibid. p. 35. (b)—Ibid. p. 36. (c)—Ibid. p. 37 C  
courts of common pleas and sessions, registers, masters and commissioners of equity, in office 17th December, 1812, also excepted.—See Sess. Ac p. 12.

## OFFICE.

Jars, for the faithful discharge of the duties of their respective offices; each tax-collector shall execute a bond as heretofore; each ordinary, before he enters upon the duties of his office, shall execute a bond, with two, or more, good sureties, to the state of South-Carolina, for the faithful discharge of the duties of his office; the ordinary of Charleston district, in the penal sum of \$ 10,000; the ordinary of Georgetown district, in the penal sum of \$ 1,000; the ordinary of Beaufort district, in the penal sum of \$ 5,000; the ordinary of Colleton district, in the penal sum of \$ 5,000; and all other ordinaries, in the sum of \$ 3,000; each clerk of the courts of sessions and common pleas, shall give bond, as heretofore; each register, and commissioner in equity, shall, before he enters upon the duties of his office, execute a bond to the state of South-Carolina, in the penal sum of \$ 10,000, for the faithful performance of the duties of his said office, except for Georgetown and Beaufort, who shall give bond as heretofore; (d) and such bonds shall be taken in the several districts throughout this state, respectively, by the commissioners appointed to take bonds and securities from the sheriffs of the several districts thereof, and be transmitted by the said commissioners to the comptroller-general, to be by him deposited in the treasurer's office of the upper division, when they relate to the upper division; and when relating to the lower division, to be deposited in the treasurer's office in Charleston.—(e.)

XV. Every bond given by any public officer, for the faithful performance of his duties, shall, previously to its being accepted, or recorded, be examined by the attorney general, or by one of the solicitors, who shall certify, in writing, on the back thereof, that he approves of the form of the said bond; without which certificate, no such bond shall be accepted: And every bond to be given by any public officer, who is authorized by law to hold his office after the expiration of its regular term, and until a successor shall be elected, shall contain an express clause, specifying that the said bond shall ensue and be good against the obligors, during the whole period that the said officer shall, or may, continue in office.—(o.)

XVI. The bonds for the faithful performance of their respective duties, entered into by the following public officers, namely, the comptroller-general, the attorney-general, the secretary of state, the surveyor-general, and the treasurer of the upper division, shall be first approved of, and afterwards annually examined, by the governor, at such time as he may appoint; that if any of the sureties, in either of the aforesaid officer's bonds should die, or depart, permanently, from the state, or, if the said governor should, at the time of his examination, or at any

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(d)—1814, Sess. Acts, p. 53. (e)—1812, Ibid. p. 35. (o)—1820, Ibid. p. 42.

ther time, be of opinion, that either of the said sureties is not worth as much, clear of debt, as his portion of the obligation, to which his name is affixed, he, the said governor, shall cause the said public officer, whose surety has departed this life, or removed from the state, or is objected to for insolvency, to be notified of such exception; and said officer shall, within thirty days after the service of such notification, procure other satisfactory security to the said governor, for such as have departed the state, or died, (but shall not cancel, or at all impair the original bond,) or procure satisfactory evidence to the said governor, that the surety objected to as insolvent, is worth as much as his proportion of the said obligation, clear of debt; or else the said public officer shall procure such additional and sufficient surety, or sureties, as the said governor shall approve of: And in default of compliance with either of the said requisitions, within thirty days, the office of the said defaulting officer shall be regarded as vacant.—(a.)

XVII. The bonds for the faithful performance of their official duties to be entered into by all other public officers, whose bonds are by law directed to be deposited in the office of the treasurer of the upper division, shall be annually examined by the secretary of state, the surveyor-general, and the treasurer of the upper division, at such time as they, or a majority of them, may appoint: that if any of the sureties in any of the aforesaid officers' bonds, should die, or remove from the state, or if the said examiners, or a majority of them, should, at the time of their examination, or at any other time, be of opinion, that either of said sureties is not worth as much, clear of debt, as his proportion of the obligation, to which his name is affixed, the said examiners, or a majority of them, shall cause the said public officer, whose surety has departed this life, or removed from the state, or is objected to, for insolvency, to be notified of such exception; and the said officer shall, within thirty days after the service of such notification, procure other satisfactory security to the said examiners, for such as have departed from the state, or died, (but the original bond shall not be cancelled, or impaired,) or produce satisfactory evidence to the said examiners, that the surety objected to, as insolvent, is worth as much as his proportion of said obligation, clear of debt, or else, the said public officers shall procure such other additional and sufficient surety, or sureties, as a majority of the said examiners shall approve of: And in default of compliance with either of the said requisitions, within the said thirty days, the office of the said defaulting officer shall be regarded as vacant.—(b.)

XVIII. The bonds for the faithful performance of their official duties, to be entered into by all other public officers, whose

(a)—1820, Sess. Acts, p. 42. (b)—Ibid. p. 43.

bonds are directed, by law, to be deposited in the treasurer's office in Charleston, including those of any master or commissioner in equity, for Charleston district, shall be annually examined by the attorney-general, the comptroller-general, and secretary of state, at such time, as they, or a majority of them, shall appoint; and if any of the sureties in either of the said officers' bonds should die, or remove from the state; or if the said examiners, or a majority of them, should, at the time of their examination, or at any other time, be of opinion, that either of the said sureties is not worth as much, clear of debt, as his proportion of the obligation, to which his name is affixed, the said examiners, or a majority of them, shall cause the said public officer, whose surety has departed this life, or removed from the state, or is objected to for insolvency, to be notified of such exception; and the said officer shall, within thirty days, after the service of such intification, procure other satisfactory security to the said examiners, for such as have departed from the state, or died, (but the original bond shall not be cancelled or impaired,) or produce satisfactory evidence to the said examiners, that the surety objected to as insolvent, is worth as much as his proportion of the said obligation, clear of debt; or else the said public officer shall procure such other additional and sufficient surety, or sureties, as a majority of the said examiners shall approve of: and in default of compliance with either of the said requisitions, within the said thirty days, the office of the said defaulting officer shall be regarded as vacant.—(n.)

XIX. Every master or commissioner in equity, who shall be elected for Charleston district, shall execute a bond, with good and sufficient sureties to the State of South Carolina, in the sum of thirty thousand dollars, for the faithful performance of the duties of his office: which sureties shall be previously approved of by the attorney general, the comptroller-general, and the secretary of state, or a majority of them; and the said bonds shall be deposited and recorded in the treasurer's office in Charleston.—(a.)

XX. The several commissioners in equity for this state, and ordinaries, upon their taking the oaths required of justices of the quorum, and peace, shall have all the powers, and authority of justices of the quorum, except in the trial of small and mean causes, and in officiating as commissioners of special hail.—(b.)

XXI. The clerk of the court of each district shall be register of mesne conveyances for the same, in those districts, wherein county courts have been established, and in the following other districts, viz: Marion district, Colleton district, and Beaufort district.—(c.)

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(n)—1820. Sess. Acts, p. 44. (a)—Ibid. (b)—Ibid. p. 6. (c)—1799, 2d Faust, p. 318.

**XXII.** It shall be the duty of the clerks of the respective district courts, to transmit certified copies of the accounts rendered to them by the commissioners of the poor, and of the roads, in the several districts and parishes in this state, to the comptroller general, to be, by him, laid before the legislature: and in case of failure, the said clerks, respectively, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt, in any court of law having competent jurisdiction.—And it shall be the duty of the attorney-general, and solicitors, in their respective circuits, to inquire of the clerks of the several district courts, whether the commissioners of the poor, and of the roads, have made their returns, as aforesaid; and to inquire of the comptroller whether the said clerks have made their returns, as above required: and in case the said clerks, or commissioners, have not so made their returns, the attorney-general, or solicitors, as the case may be, shall, forthwith, sue for, and recover, on behalf of the state, the penalties by law declared.—(d.)

**XXIII.** The secretary of state, registers and commissioners in equity, registers of mesne conveyances, ordinaries, and surveyor-general, shall keep their several offices open from nine o'clock in the morning until three o'clock in the afternoon, each and every day, throughout the year, (Sundays, Christmas day, and the Anniversary of the Independence of America excepted;) and the sheriffs, and clerks of all courts, shall give constant attendance at their offices, either by themselves, or deputies, in their several and respective offices: which said offices shall be kept in the city, town, or village, where the respective court-houses are established.—(e.)

**XXIV.** The attorney-general, solicitors, tax-collectors, ordinaries, clerks, registers, masters and commissioners in equity, commissioners of locations, and registers of mesne conveyances, shall hold their respective offices during the term of four years, and, also, until a successor in office shall have been elected, and shall be commissioned and enter upon the duties of his office.—(f.)

**XXV.** The clerks of the courts of common pleas and general sessions, commissioners of locations, and ordinaries, in the several districts within this state, shall be elected by the citizens, qualified by the constitution to vote for members of either branch of the legislature; and, for that purpose, an election shall be held on the second Monday, and the day following, in January, in every year, in such of the districts as there may then be vacancies in, to be conducted in the same manner, by the same managers, and to be holden at the same places, as shall be appointed by law, for the conducting, managing, and

(d)—1810, Sess. Acts, p. 14. (e)—1791, 1st Faust, p. 21. (f)—1819, Sess. Acts, p. 24.

holding of elections for members of the legislature, to elect the said officers, for the several districts within the state, wherein any vacancy shall happen in the aforesaid offices, occasioned either by death, removal out of the state, resignation, removal from, or expiring of office, or otherwise, of any person possessing the same: and it shall be the duty of the said managers, in the several districts, where such vacancies may occur, to give twenty days' notice thereof, for an election to be holden to fill such vacancy, by advertising the same in the gazette, if any be printed in the district, and by advertising the same at three public places, where such election is to be holden: And, if no gazette be printed in such district, then by advertising the same on the court-house door, and at five other public places within such district. And the said managers shall meet at the court-house of the district, where such election shall be holden, on the Thursday next after the election, to count over the votes, and declare the election of the person who shall have the greatest number of votes; and shall certify to the governor, such person elected, (unless such election shall be contested in manner hereafter mentioned): And upon such certificate being produced, the governor shall, immediately thereon, commission such person, upon his having first complied with all the requisitions attached to the office, for which such person shall be elected.—(a.)

XXVI. If any person shall be disposed to contest the election of any person so elected, to fill any of the offices aforesaid, he shall, on the day, on which the votes are counted, and the election declared, signify such intention, in writing, so to do, to the managers, and the grounds on which he intends to contest the same: And the said managers shall, thereupon, be authorized and empowered, to hear, and determine, such contested election, upon the grounds to them stated: Provided, that no manager shall be permitted to sit upon the hearing and determining of any contested election, wherein he may have been a candidate, to fill the vacancy, for which such election was holden; and in case such election shall not be declared void, the said managers shall certify to the governor, the person who is elected, and the office for which he is elected; who shall be commissioned in manner aforesaid.—(b.)

XXVII. It shall be the duty of the governor, to fill all vacancies in either of the aforesaid offices, that shall take place, by the death, resignation, removal out of the state, removal from, or expiration of, office, of any person possessing the same, or by any election for either of the said offices being declared void by the managers, as aforesaid, or where any two, or more, candidates shall have an equal number of votes, to hold under such appointment, until such time as an election shall take place according to the provisions of this act.—(c.)

(a)—1815, Sess. Acts, p. 56. (b)—Ibid. p. 57. (c)—Ibid. p. 58.

## OFFICE.

S. 22

**XXVIII.** All laws regulating the elections of members of the general assembly, shall apply to the elections by this act prescribed, to be held for the offices aforesaid.—(b.)

**XXIX.** Clerks of the courts of common pleas and general sessions, commissioners of locations, and ordinaries, elected under this act, shall enter on the duties of their office, on the second Monday in February, next ensuing their election; and no clerk of the court of common pleas and general sessions, commissioners of locations, or ordinaries, shall be commissioned, until he, or they, shall have given bond and security in like manner, as clerks of the courts of common pleas and general sessions, commissioners of locations and ordinaries are, by law, bound to do: And the commissions of the said officers, so to be elected, shall be for the term of four years, to be computed from the second Monday in February, in the year, in which he, or they, shall be so elected.—(b.)\*

**XXX.** No officer, elected to any pecuniary office in this state, above six hundred and forty two dollars and ninety cents, shall hold any other office of emolument under this state, or the United States.—(c.)

**XXXI.** Whenever the master, or any commissioner in equity in this state, shall be appointed a receiver, by the court of equity, and shall accept such appointment, he shall, before he enters upon the duties of such office, duly execute a bond to the judges of the court of equity, with two, or more, good and sufficient securities, to be approved by the court, making the order, in a sum equal to twice the value of the estate and effects entrusted to him, conditioned for the faithful performance of his duty, as receiver; which bond shall be kept among the records of the court, and also, recorded by the register, in a book kept for that purpose, in every court; and a copy of said bond, certified by said register, shall be delivered by him, on demand, to every party in interest in said funds; and such party, and parties, is, and are, hereby authorized to institute a suit at law, on such certified copy, either in his, or their, own name, or in the name of the judges of the court of equity, whenever he, or they, shall, or may be, aggrieved by any act, or neglect, of the said receiver.—(d.)

**XXXII.** Every receiver, appointed by the said court, shall be entitled to receive, and retain, for his trouble, as receiver, in preserving and managing all property whatsoever, committed to him, and in receiving, investing, and paying over, all monies, bonds, notes, accounts, and choses in action, and for all other duties whatsoever, as receiver, the sum of two per centum, upon

(b)—1815, Sess. Acts, p. 58. \* This act, so far as it limits the tenure of the ordinary's office, has been adjudged unconstitutional. (c)—1787, P. L. p. 427. (d)—1821, Sess. Acts, p. 9.

the amount he may receive, in money, from the collector of the bonds, notes, accounts, and choses in action; and one per centum on the good and valuable choses in action, uncollected by him; and the same on the real value of every other kind of property preserved and managed by him, and no more.—(a.)

XXXIII. Should any such receiver be ordered by the court, to invest the funds in his hands, and the accumulation of the interest thereof, when received by him, in stock, or other funds, yielding interest, as fast as received, and he should neglect to do so, he and his sureties shall be chargeable with compound interest, on all such sums, to be calculated at half yearly periods, from the time such sums were so received.—(b.)

XXXIV. Every master or commissioner in equity, or register, acting as such, shall keep a book, in which he shall open and keep a regular account with every individual, or estate, on whose account he shall have received any monies, bonds, notes, stock, choses in action, or other property of any description whatsoever, by virtue of his office, or his appointment, as receiver, or of any order, or decree, of the court; in which account he shall duly enter and regularly credit, to the parties interested, or the estate, as the case may be, every thing so received by him, on their account, and debit all payments, on account of any charges against the said parties, or estate. And the said book shall be exhibited, on demand, to any person interested in the same, who may take copies of any account therein, and require the said master, or commissioner, to certify the same; whose fee for the same shall be one dollar: And, at the expiration of the said officer's term of office, on his death, or resignation, or dismissal, the said book shall be deposited and kept among the records of the court of equity.—(b.)

XXXV. Whenever any master or commissioner in equity, shall be ordered, or decreed, by the court, to lodge in bank, or invest any monies in bonds, notes, stock, or in any property whatsoever, for, or on behalf of, any person, or estate, he shall lodge, deposit, or invest the same, not in his private name, but in his official name, as master, or commissioner, or register, or receiver, as the case may be, in trust for the said person, or estate; and shall exhibit his bank book of such entries, when required by any of the parties interested therein.—(b.)

XXXVI. On the resignation, dismissal from office, or expiration of the term of office, of any master, commissioner, or register in equity, all the papers, and documents, appertaining to his said office, together with all the monies, bonds, notes, certificates of stock, or other property, received and held by him, under the authority of the said court, shall be delivered over by him, to his successor in office, within twenty days after the

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(a)—1821, Sess. Acts, p. 9. (b)—Ibid. p. 10.

date of the commission of such successor: And should any master, commissioner, or register, in equity, depart this life, his representatives shall pay and deliver over, all the monies, documents, and assets, held by said officer, in his official capacity, as aforesaid, unto his successor, within such time as any judge of the court of equity, upon application to him by such successor, may direct.—(a.)

XXXVII. No master, or commissioner, in equity, shall be entitled to charge any commission, or fee, whatsoever, for the sale, or change, of any property under order of court, or otherwise, unless he shall have actually sold the same at public auction, by the decretal order of the court; notwithstanding he may have been ordered by the court to make titles to carry into effect any contract of sale between any parties whomsoever; in which latter case, he may charge a fee of five dollars, for his titles, and no more on any pretence.—(b.)

XXXVIII. No master, commissioner, or register, in equity, shall receive more than ten dollars for all his duties connected with the appointment of a guardian, or guardians; and the like sum, and no more, for all his duties upon any petition whatsoever, unless an actual sale of property should be made by him, in consequence thereof, when the usual commissions on sales may be charged.—(b.)

XXXIX. Should any master, commissioner, or register, in equity, violate, or neglect, any of the duties prescribed to him, by this act, he may be punished by the court of equity, as for a contempt; and his official bond may also be sued by any party aggrieved by his said violation, or neglect of duty.—(b.)



### ORDINARY, COURTS OF.

THERE shall be, in each district of this state, a court of ordinary, the judges whereof shall be chosen by a joint ballot of the two houses of the legislature, and shall exercise and administer, each in his particular district, all the powers heretofore vested in the court of ordinary.—(c.)

II. The judges of the said courts, respectively, shall have authority to issue summonses to any persons, whose testimony

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(a)—1821, Sess. Acts, p. 10. (b)—Ibid. p. 11. (c)—1799, 2d Faust, p. 315.

Ordinaries elected after the 17th day of December, 1812, to give bonds with two, or more, securities. Ordinary for Charleston district, in the penal sum of \$ 10,000; Georgetown, \$ 7000; Beaufort, \$ 5000; Colleton, \$ 5000; for all other districts, \$ 3000.—1812, Sess. Acts, p. 36.

may be necessary for the investigation of any cause, which may be depending therein; which summons shall be signed by the judge who issues the same, and sealed with the seal of the court whereof he shall be judge.—(b.)

III. All sheriffs and their deputies shall execute all summonses and other precepts whatsoever, to them, or either of them, directed, by the judge of any court of ordinary; and every person, who shall, at any time, be duly summoned to attend, and give evidence in any of the said courts, and shall refuse, or neglect so to do, shall be subject to the same penalties, and liable to be proceeded against in the same manner, by process of such court, as if such person had refused to appear, or give evidence, when therunto lawfully required in any district court of this state.—(b.)

IV. If any person shall think himself aggrieved by the judgment, sentence, decree, determination, order, or denial, of any court of ordinary, such person shall be at liberty to appeal therefrom to the court of common pleas of the district, in which the said court of ordinary shall be holden, within twenty days next after such judgment, decree, determination, order, or denial, shall have been given: (b) Provided the appellant shall give bond, with good security, for prosecuting his appeal with effect, and to pay all costs and damages awarded to the appellee, if the judgment of the said court of ordinary shall be affirmed.—(c.)

V. The said ordinaries shall have power to call administrators to account, touching the goods of any person dying intestate; and upon hearing, and due consideration thereof, to order and make just and equal distribution of what remains clear after all debts and just expenses allowed, amongst the persons entitled thereto, saving the right of appeal, as in other cases.—(d.)

VI. The ordinaries of the several districts shall, once in every year, in the months of January and February, return to the secretary's office, a list of all probates and administrations, granted in their respective courts, within the preceding year, which shall express the date of the certificate of probate, or letters of administration, the name of the testator, or intestate, names of the executors, or administrators, and their securities, and penalties of their bonds; which lists shall be carefully filed in the said office, those of each district separated from the rest.—(e.)

VII. No person holding the office of ordinary, for any district in this state, shall be allowed, in his own name, or in the name of any other person, or persons, to receive any fee, as a counsel fee, either as an attorney, or solicitor, or in any other

(b)—1799, 2d Faust, p. 316. (c)—1785, P. L. p. 372. (d)—Ibid. p. 81.  
(e)—Ibid. p. 494.

shape whatever, concerning, or touching any cause, matter, thing, or estate, that may officially come before him, as ordinary, otherwise than such fee, or fees, as may be allowed to such ordinary for his services in the execution of his duty therein by any act of assembly of this state; and no person holding the office of ordinary, as aforesaid, shall be allowed, whilst he holds the said office, to practice law, in his own name, or in the name of any other person, in any court of law, or equity, in this state.—(r.)

VIII. It shall be the duty of the several ordinaries of this state, when applied to by any person for that purpose, at their respective offices, to search and examine any book, record, or paper, appertaining to such office, as such person may require, and be in want of, and to furnish any such person with a copy, or copies, of any part thereof, or of the whole of any proceeding touching any estate, or estates, in his care, or custody, as ordinary, and to certify the same; for which services, respectively, he shall be allowed at the rate of nine cents for each copy sheet the same shall contain, and twenty-five cents for every certificate he shall so give.—(r.)

## PARTITION.

It shall be lawful for any person entitled to a distributive share of any estate, real, or personal, who shall have arrived at the age of twenty-one years, or be married, to apply to the clerk of the court of common pleas, for a summons to be issued and directed to all persons in possession of, or interested in, such estate, commanding them to appear at the next court of common pleas, that shall be holden, ten days after the service of such summons, for the district, wherein such estate shall be, to shew cause why a writ of partition to be directed to certain commissioners, authorizing and requiring them to divide the said estate, should not be awarded by the said court; and if, on the return of such summons, sufficient cause be not shewn to the contrary, the said court shall order a writ of partition to be issued and directed to five persons, two of whom shall be nominated by each of the said parties, plaintiff, and defendant, and a fifth by the court, commanding them, or a majority of them, being first duly sworn, fairly and impartially to discharge their duty, to proceed to execute the said writ, and return the same to the court.—(h.)

(r)—1811, Sess. Acts, p. 58. (h)—1791, 1st Faust, pp. 27-241.—P. L. p. 394, and 2d Faust, p. 315.

any where without the same, with a lawful ticket, he shall forfeit the sum of fifty dollars, to be recovered by the owner, and to his use, by action of debt, besides being liable to the owner in action of trespass for damages.—(a.)

V. The said patrols, in their respective divisions, are hereby authorized and required to enter into any disorderly house, or into any other house, vessel, or boat, suspected of harboring, trafficking, or dealing with, negroes; whether the same be occupied by white persons, free negroes, mulattoes, mestizos, or slaves, and to apprehend and correct all slaves found there, by whipping, as herein before directed: And the said patrols are moreover authorized and required to give information of such white persons, as may be found in such house, vessel, or boat, and to detain in their possession, such produce, or articles, for trafficking, as may be found in such house, vessel, or boat, if such detention be authorized by any three freeholders, or by any justice of the peace, until the same shall be recovered according to law.—(a.)

VI. It shall not be lawful for any slave, except in the company and presence of some white person, to carry, or make use of, any fire arms, unless such slave shall have a ticket, or license, in writing, from his overseer, or owners, or be employed to hunt and kill game, mischievous birds, or beasts of prey, within the limits of his master's plantation; or shall be a watchman in, and over, his owner's fields and plantation: And in case any white person shall find any slave using, or carrying any gun, or other offensive weapon, contrary to the intent and meaning of this act, he, she, or they, may lawfully seize such gun, or offensive weapon, and convert the same to his, her, or their, own use; but before the property of such goods shall be vested in the person, who shall seize the same, such person shall, within forty-eight hours after such seizure, go before the next justice, and make oath of the manner of taking; and if such justice of the peace, after such oath shall be made, or if, upon any other examination, he shall be satisfied, that the said firearms, or other offensive weapons, shall have been seized according to the directions, and agreeable to the true intent and meaning of this act, the said justice shall, by certificate under his hand and seal, declare them forfeited, and that the property is lawfully vested in the person who seized the same: Provided that no such certificate shall be granted until the owner, or owners, of such fire arms, or other offensive weapon, so seized, as aforesaid; or the overseer, or overseers, who shall, or may, have the charge of such slave, or slaves, from whom such fire arms, or other offensive weapon, shall have been taken, or seized, shall be duly summoned to shew cause, if any they have, why the

same should not be condemned as forfeited; nor until forty-eight hours after the service of such summons, and oath made of the service thereof, before the said justice.—(a.)

VII. The commander of every patrol shall have power to keep the men under his command in good order and demeanor during their term of service: and in case any patrol man shall misbehave himself, or neglect, or disobey the orders of his commander, he shall be subject to a fine of not more than two dollars, to be imposed by the company court-martial, to which such offender shall belong; to be paid to the commissioners of the poor, for the use of the poor.—(a.)

VIII. If any captain of a patrol shall act disorderly while on duty, so as to defeat the orderly performance, or execution, of the patrol laws, agreeable to the true intent and meaning thereof, he shall be liable to be returned by either of the members of his patrol, or other person competent to give evidence, to the commanding officer of the beat, who shall order a court-martial for such trial: and, upon sufficient evidence being given of the charge, such captain of the patrol shall be fined in the sum of five dollars; to be recovered and applied, as aforesaid, to the use of the poor.—(b.)

IX. It shall be lawful for any person or persons, hereby declared liable to perform patrol duty, to send any able-bodied white man, between the ages of eighteen and sixty, to perform patrol duty for him, or them: and if any patrol man shall neglect or refuse to perform the duty required of him by this act, or to procure a substitute to perform the same, without a legal excuse, he shall forfeit and pay a fine of two dollars for each and every such default, and ten per cent. on his general tax for the year preceding, paid by him on the property owned by him in the district, or parish, in which he is a defaulter; to be inflicted by a court-martial of the company, in which the offender may reside, to the use of the poor of the district, or parish.—(b.)

X. Each captain of patrol shall make a return, upon oath, of the performance of the duties of his office, as commander of such patrol, to the captain, or officer commanding the beat company, at the regular time required by this act, under the penalty of a fine of twenty-dollars, to be recovered by indictment.—(b.)

XI. It shall be lawful for all persons, as well patrol as other persons, to apprehend, and moderately correct, with stripes, not exceeding twenty, all slaves, who may be found without their owner's plantations, without a ticket, in the form, or of the import, of the ticket before prescribed by this act, to be used by persons, who shall have the care or management of any slave or slaves; or, with a ticket, if such slave, or slaves, shall

(a)—1819, Sess. Acts, p. 31. (b)—Ibid. p. 32.

have in his possession, any gun, pistol, or other offensive weapon; unless such slave shall be on lawful business, or in company with some white person, not less than ten years of age; and also, to disperse, and punish, as aforesaid, all unlawful assemblies of slaves, free negroes, mulattoes, or mustizoes, whether the said assembly shall consist of all, or any of the persons above described: Provided always, that nothing herein contained shall be construed to authorize any person to break into, or disturb, any church, or place of public worship, wherein shall be assembled, the members of any religious society, a majority of whom shall be white persons, at any time before nine o'clock in the evening; unless the said person, or persons, shall have previously obtained a warrant from a magistrate authorizing him, or them, to do so: And provided also, that nothing herein contained, shall be construed so as to authorize any patrol, or other person, to strike and correct, or beat, in any manner, any slave, or slaves, who shall be employed by the person having the charge of such slave, or slaves, in any incorporated town, when such slave, or slaves, shall be absent from the place of residence of such slave, or slaves, between day break and nine o'clock in the evening, within the limits of such incorporated town, unless such slave, or slaves, shall be engaged in an unlawful purpose.—(a.)

XII. It shall be lawful for any person, or persons, who may be engaged in dispersing any unlawful assembly of slaves, free negroes, mulattoes, or mustizoes, to enter into all such places, as the said persons may be assembled at; and, if resisted, they may break open doors, gates, or windows.—(b.)

XIII. Every owner of a settled plantation shall employ and keep, on such plantation, some white man capable of performing patrol duty, under the penalty of fifty cents per head, per month, for every working slave, which may be on such plantation; to be recovered by indictment, one half to the informer, the other half to the use of the state: Provided always, that nothing herein contained shall be construed to affect any person, or persons, who resides on his, her, or their plantation, for the space of seven months in the year; or who shall employ less than ten working slaves on such plantation.—(b.)

XIV. It shall be the duty of the captain, or commanding officer, of each company, to read this act to his company, at least once in six months.—(b.)

XV. Nothing herein contained shall be so construed, as to deprive the intendant and wardens of any incorporated town of

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(a)—1819, Sess. Acts, p. 33. This act originally contained the form of the ticket referred to, which required that the place, or places, to which a slave was permitted to go, should be therein designated; but in the progress of the bill, this part was stricken out, without any corresponding alteration in the phraseology of this section. For the form of a ticket, see title Slaves, sec. ii. (b)—Ibid. p. 33.

any power heretofore vested in them to regulate and order out patrols within the limits of such corporation.—(a.)

XVI. If any person, or persons, shall commence an action against any patrol, or other person, for any trespass by him committed in carrying into execution the provisions, for any trespass by him committed in carrying into execution the provisions of this act, and at the trial thereof, shall fail to recover any damage, he, she, or they, shall be liable, and adjudged, to pay to the party so sued, triple costs.—(a.)

XVII. Every person doing patrol duty for himself, or for another, shall provide for himself, and keep always in readiness, and carry with him, on his patrol service, one good gun, or pistol, or cutlass, and cartridge box, with at least six cartridges in it, under the penalty of sixty cents for every failure so to do.—(b.)

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### PERJURY.

EVERY person, who shall unlawfully and corruptly procure any witness, by any means whatsoever, to commit any wilful and corrupt perjury, in any matter, or cause, whatsoever, depending in suit and variance by any action, writ, or bill, in anywise touching, or concerning, lands, tenements, or hereditaments, or any goods, chattels, debts, or damages, in any of the courts of this state; or shall unlawfully and corruptly procure or suborn any witness, who shall be sworn to testify *in perpetuum rei memoriam* (c), or in any criminal prosecution (d), every such offender, being thereof lawfully convicted, shall forfeit and pay the sum of one hundred and seventy-one dollars and forty cents, and suffer imprisonment, at the discretion of the court, before which he shall be convicted, for any term not exceeding seven years.—(e.)

II. If any person, by the unlawful procurement of others, or by his own act, shall wilfully and corruptly commit any manner of perjury, he shall forfeit and pay the sum of eighty-five dollars and seventy cents, and be liable to be punished by imprisonment, as before directed, in the case of subornation of perjury.—(f.)

III. If any person convicted of subornation of perjury, as aforesaid, shall not have goods, chattels, lands, or tenements, to the value of the aforesaid sum of one hundred and seventy-one dollars and forty cents, then every such person shall, in ad-

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(a)—1819, Sess. Acts, p. 34. (b)—1746, P. L. p. 207. (c)—1712, Ibid. p. 61 and 147. (d)—Ibid. p. 92. (e)—1736, Ibid. p. 147. (f)—Ibid. p. 61 and 147.

## PHYSICIANS.

dition to the punishment by imprisonment, stand in the pillory for the space of one whole hour; and if any person convicted of wilful perjury, shall not have goods or chattels to the value of the aforesaid sum of eighty-five dollars and seventy cents, then every such offender shall, in addition to his punishment, by imprisonment, be set in the pillory for the space of one whole hour, and have both his ears nailed thereto.—(d.)

IV. The oath of any person convicted of perjury, shall not, from thenceforth, be received in any court within this state, until such time as such judgment shall be reversed.—(d.)

V. Every person convicted of falsely or corruptly affirming, or declaring, any matter, or thing, which, if the same had been on oath on the Holy Evangelists, would, by law, amount to wilful and corrupt perjury, shall incur the same penalties, forfeitures, and disabilities, as persons convicted of wilful and corrupt perjury.—(g.)

VI. One moiety of the forfeitures aforesaid, shall go to the state, and the other moiety to the party aggrieved, by reason of the offence or offences aforesaid, who will sue for the same by action of debt, or otherwise, in any court of competent jurisdiction in this state.—(h.)

## PHYSICIANS.

No person shall be allowed to practice physic, or surgery, or in any manner, prescribe for the cure of diseases, for fee, or reward, unless he shall have been first licensed to do so, in the manner hereinafter prescribed.—(a.)

II. If any person shall presume, without such license, to practice physic, surgery, or in any manner prescribe for the cure of diseases, for fee, or reward, he shall be liable to be indicted, and, on conviction, shall be fined, not exceeding the sum of five hundred dollars, and be imprisoned, not exceeding the term of two months; one half of the fine to the use of him who shall inform, and the other half to the use of the state.—(a.)

III. On the trial of all indictments for any of the offences enumerated in this act, it shall be incumbent on the defendant to show that he has been licensed to practice physic and surgery, and to prescribe for the cure of diseases, in the manner hereinafter mentioned, to exempt himself from the penalties enumerated in this act.—(a.)

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(d)—1736, P. L. p. 62 and 147. (g)—1731, Ibid. p. 128. (h)—Ibid. pp. 61-63. (a)—1817, Sess. Acts, p. 31.

**IV.** All bonds, notes, promises, and assumptions, made to any person, or persons, not licensed in manner hereinafter mentioned, the consideration of which shall be services rendered as a physician, or surgeon, in prescribing for the cure of diseases, shall be utterly void, and of no effect.—(a.)

**V.** There shall be established two boards of physicians, one at Charleston, and the other at Columbia, who shall, at their annual meetings, examine all applicants; and if, on such examination, they are found competent, shall grant to such applicants, a license to practice physick and surgery: Provided, that three members of either of the said boards, shall constitute a quorum, to make such examination, and grant such license: And provided also, that no person shall be so licensed, unless he shall prove, to the satisfaction of the board, that he has studied medicine and surgery under the direction of some regular-  
bred practicing physician, for at least two years.—(b.)

**VI.** The medical society of South Carolina, shall constitute the board of physicians at Charleston; and the following persons shall constitute the board of physicians at Columbia, to wit: Edward Fisher, James Davis, Edward D. Smith, George P. Hazell; G. W. Phillips, Burr Johnson, George W. Glou, William Bratton, Joseph W. Waldo, Andrew Moore, George Ross, Edward H. Anderson, William Blanding, Thos. Casey, V. D. V. Jameson, James Ainsworth, Oliver Hawes, A. S. Moore, Peter Kean, Robert Campbell, Waller O. Bickley, Eber Smith, Richard B. Screeven, John K. M-Ivor, Abraham Deleon, William Langley, Benjamin Harris, Barkley Jones, Roderick Mercheson, Swerson Cox, Benjamin Clap, Richard Harrison, Isaac Auld, and John Dunham.—(b.)

**VII.** The annual meeting of the board of physicians, at Columbia, shall be held in the town of Columbia, on the Wednesday after the first Monday in December, in each and every year: And the said board at Columbia and Charleston shall be entitled to receive and demand of every applicant, when licensed, the sum of five dollars, for each and every examination, and the sum of five dollars for every license.—(b.)

**VIII.** No part, or clause, of this act, shall have any operation, or effect, upon any person now practising medicine, or surgery, within this state.—(c.)

**IX.** No apothecary within this state shall be permitted to vend, or expose to sale, any drugs, or medicines, without previously obtaining a license to do so, from the medical society of South Carolina, or board of physicians, created by this act: And every apothecary, vending, or selling, drugs, or medicines, contrary to the provisions of this act, shall be liable to all the penalties imposed by this act, on physicians and surgeons, prac-

(a)—1817, Sess. Acts, p. 31. (b)—Ibid. p. 32. (c)—Ibid. p. 33.

ticing without license: Provided, that nothing herein contained, shall be construed to prevent merchants, or shop keepers, from vending, or exposing to sale, medicines already prepared.—(a.)

X. The medical society of South Carolina, and board of physicians, created by this act, shall have the power to examine any apothecary who may apply to them for a license, touching their knowledge of drugs and pharmacy, and, on finding such person qualified, shall grant such license, and shall receive therefor the same fees as is provided in this act for license to practice medicine and surgery.—(a.)

XI. The medical society of Charleston, or any three members of the board of physicians, at Columbia, shall be authorized, during the recess of the annual board, to examine any applicants; and if, on examination, deemed competent to practice medicine and surgery, shall grant them permission to practice until the next annual meeting of the board of physicians, at Charleston, or Columbia, to whom they shall make application for a license to practice medicine and surgery; and if refused, shall not be again permitted to practice, except by a license from one of the boards.—(a.)

XII. The said medical board, at Columbia, are hereby empowered to elect all such officers, and frame all by-laws, as may be necessary to carry this act into effect: And, in case of the death, removal, or refusal to serve, of any member of the said board, the said board, or a quorum of them, shall be authorized to fill up every such vacancy.—(a.)

XIII. If any of the members, by this act, appointed to constitute the board of physicians, to meet at Columbia, shall fail to attend the meeting of the said board of physicians, for three successive annual meetings of the same, he shall be no longer considered a member thereof; and it shall be the duty of the presiding member, at each meeting of the said board, to note the defaulters at such meeting.—(b.)

### POOR.

The respective managers of elections for members of the legislature, in the several election districts throughout this state, shall open a poll for the election of commissioners of the poor, not exceeding five; the elections to be holden at the same times and places, and in the same manner, as is usual for the election of members of the legislature: and all persons, who have a right

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(a)—1817, Sess. Acts, p. 33. (b)—Ibid., p. 34.

to vote for members of the legislature, shall also be entitled to vote for the said commissioners.—(a.)

II. The said commissioners of the poor, elected as aforesaid, shall have the oversight, ordering, and relieving of the poor in the said election districts, respectively; and shall have power to demand and receive all such gifts, and legacies, and all such fines, and forfeitures, and other monies and things whatsoever, as are, or may be, given to the use of the poor, and in case of refusal to deliver, or pay the same, to commence and prosecute any lawful action for the recovery thereof.—(a.)

III. It shall be the duty of the commissioners of the poor, in the several districts and parishes in this state, to elect some person as treasurer, who shall enter into bond with securities, to be approved by a majority of the commissioners of each district, or parish, payable to the State of South-Carolina, in such penal sum as the said commissioners of the poor shall deem sufficient, for the faithful discharge of the duties of his office: which bond shall be deposited in the treasury of the division, in which the said treasurers may, respectively, reside: and it shall be the duty of the said treasurers to return to the clerks of the courts, in which they respectively reside, an account, on oath, of all monies due to the commissioners, for whom they are treasurers, as well as an account of the receipts and expenditures, on, or before the first Monday of September, in every year: and for neglect of this duty, shall, severally, forfeit and pay the sum of one hundred dollars, to be sued for and recovered by the attorney general, or solicitor, as the case may be, on behalf of the state, in any court of law having competent jurisdiction: and the said treasurers shall, respectively, have and receive, for their trouble, two and a half per cent. on all sums received, and two and a half per cent. on all sums paid away by them.—(b.)

IV. The poor of the election districts, respectively, shall be relieved and educated out of all such monies, goods, or things, and out of such fines, mulcts, and forfeitures, as shall be given to the use of the poor: and in case the same shall not be sufficient for that purpose, it shall be lawful for the said commissioners, in their respective districts, once in every year, to assess such sums of money, as shall supply the deficiency; the said assessments to be made equally upon the estates, real and personal, of all the inhabitants, owners, and occupiers, of lands, tenements, and hereditaments, or any personal estates within the several districts, (c) in proportion to their general tax for the preceding year: (d) and, in case any person shall refuse or neglect to pay the sum, which he, or she, may be assessed, at

(a)—1791, 1st Faust, pp. 76-292. (b)—1818, Sess. Ac's, p. 6. and 1820, Sess. Ac's, p. 14. (c)—1791, 1st Faust, p. 76-292. (d)—1737, P. L. p. 151.

the time appointed for the payment of the same, the collectors respectively, shall immediately set up, for ten days, at some public place in their several districts, a list of defaulters; and if the sum, or sums, of money, so assessed as aforesaid, be not paid within those ten days, then the said collectors shall, without further delay, cause the same to be levied by virtue of a warrant by them, respectively, to be signed and sealed for that purpose; which warrant shall be directed to the sheriff of the district, (or coroner, where the sheriff shall be interested,) (o) where such defaulter lives or resides; and if no property can be found, or shall be produced, whereof the same may be levied, the sheriff, by virtue of the said warrant, shall take the body of the said defaulter, and convey him to the common gaol of his district, there to be detained till the debt aforesaid, and charges, be satisfied.—(c.)

V. If any poor children shall be chargeable to the respective parishes, or districts, it shall be lawful for the commissioners of such parishes, or districts, to bind out such children as apprentices, until every male child shall arrive to the age of twenty-one years, and every female child, till she shall arrive to the age of eighteen years, or be married.—(d.)

VI. The said commissioners shall have power to assess and collect taxes for the purpose of discharging all debts and demands incurred or due for the support of the poor of their respective districts, previously to their appointment, in the same manner, as they are authorized to assess and collect taxes for the payment of the like debts and demands incurred and due after their appointment.—(a.)

VII. The tax-collectors throughout the state shall collect the poor tax in their several and respective districts, and be allowed, as a compensation for their services, the same percentage, as they are entitled to for collecting the public taxes; and shall have power to enforce the payment thereof in the manner hereinbefore directed; and in case of default, shall be liable to the same pains and penalties, as are provided by law for any similar default in collecting, or paying the general tax: Provided always, that the said tax-collectors shall be furnished with an account of the poor tax, which each inhabitant is liable to pay to him, at least one month before the time appointed for making returns of the general tax.—(g.)

VIII. Each tax-collector shall pay to the commissioners of the poor, or their treasurer, on the first Monday of August, in every year, all the monies which may be collected by him for the use of the poor, except where such monies have been other-

(o)—1802, 2d Faust, p. 492. (c)—1788, P. L. p. 437. (d)—1791, 1st Faust, p. 77. (a)—1796, 2d Faust, p. 99. (g)—1797, 2d Faust, p. 149—~~also~~ also p. 492.

## POOR.

wise appropriated by law, under the penalty of forfeiting ten dollars for every day he may fail in so doing, to the use of the poor of the parish, or district, wherein such default shall happen; to be recovered in any court having competent jurisdiction.—(h.)

IX. The said commissioners, when elected, as aforesaid, shall be obliged to serve, under the penalty of forfeiting twenty-one dollars and forty-three cents, for each person refusing or declining to serve: Provided nevertheless, that no person shall be compelled to serve more than two years in six; and they shall continue to exercise the duties, powers, and authorities vested in them by law, for the term of two years, from the time of their respective elections.—(m.)

X. No person shall be esteemed or held in law to be a settler, or inhabitant, of any parish, or district, in this state, so as to be entitled to the benefits of this act, unless such person hath been resident in such parish, or district, twelve months—(a.)

XI. If any person shall remove from one parish, or district, to another, who, it is feared, may become chargeable, upon complaint thereof made to any justice of the peace, by the commissioners of the poor, at any time within twelve months, such justice, resident in the parish, or district, where such person comes to inhabit, may, by warrant, remove and convey him, or her, to the parish, or district, where he, or she, was last legally settled, unless such person give security for the discharge of the parish, or district, to be allowed by the said justice; and if such person shall refuse to go, or shall, of his own accord, come back to the place from whence he had been removed, such person so offending shall be punished as a vagabond; and if any commissioners of the poor shall refuse to receive such person so removed, any justice of the peace may bind them to appear at the court of sessions, to be indicted for their contempt.—(b.)

XII. If any person shall be so poor, as to be chargeable to the parish, or district, who hath a father, or grand father, mother, or grand mother, child, or children, of sufficient ability to relieve such poor person, it shall, in that case, be lawful for the commissioners of the poor, upon complaint thereof made, to order some one, or more, or all, of such relations, to allow such poor person so much, by the week, as they shall think fit; and in case of refusal to pay the same, it shall be lawful for any justice of the peace of the parish, or district, by warrant under his hand and seal, directed to any constable, to levy the same by distress and sale of the goods of such defaulter, or defaulters, and for want of a sufficient distress, to commit him, her, or them, till payment be made.—(b.)

(h)—1810, Sess. Acts, p. 15. (m)—1791, 1st Faust, p. 77. (a)—1768, P. L. p. 263. (b)—1712, P. L. p. 105.

## PRETENSED TITLES.

**XIII.** If any poor person shall have cause of action against y other person in this state, he shall have, at the discretion of court, before which he would sue, writs original, and of sub-  
-ma, according to the nature of his case, without paying any ng therefor.—(b.)

**XIV.** The said court shall direct their clerk to issue the neces-  
-ry process, and shall assign him council for the prosecution  
the suit, who shall do their duty without any reward for the me.—(b.)

**XV.** No poor person so admitted by the court, being plain-  
-in any action, or suit, shall be compelled to pay any costs,  
t may be subject to the other punishment, at the discretion of  
court.—(c.)

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## PRETENSED TITLES.

No person shall convey, or take, or bargain to convey, or ce, any pretensed title to any lands, or tenements, unless the rson conveying, or bargaining to convey, or those, under whom he, or she, claims, shall have been in possession of the me, or of the reversion, or remainder, thereof, one whole ar next before; and he who offendeth herein, knowingly, shall feit the whole value of the lands, or tenements; one moiety the state, and the other to him, who will sue, as well for him-  
-self as for the state: Provided nevertheless, that any person vfully possessed of any lands, or tenements, or of the rever-  
-ns, or remainder thereof, shall be at liberty to take, or bar-  
-in to take, the pretensed title of any other person, so far as may confirm his former estate: And provided also, that no rson shall be charged with the penalty herein before men-  
-ned, unless a suit be commenced therefor, by action of bt, within one year next after the commission of the of-  
-ce.—(a.)

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## PRISON BOUNDS.

ALL prisoners on mesne process, in any civil action, commit-  
l to the custody of the sheriff of any district in this state, on  
mplying with the requisitions herein after contained, shall be

—1712, P. L. p. 44. (c)—Ibid. p. 48. (a)—1712, Ibid. p. 53 and 64.

entitled, every day during their confinements to be and remain unmolested, in any part of the rules, bounds, or limits, of the prison, where they shall be confined; which rules, limits, or bounds, shall extend three hundred and fifty yards in a direct line from each side of the prison walls; and shall be marked out, and ascertained in some distinct manner, by the respective sheriffs.—(b.)

II. No person committed on mesne process, as aforesaid, shall be entitled to the benefit of the said rules or bounds, before he, or she, shall have given satisfactory security to the sheriff of the district, not to go, or be, without the said rules; and the said sheriff shall be answerable for the solvency of such security.—(b.)

III. All prisoners, in execution on civil process, committed to the custody of any sheriff, shall be entitled to the benefit of the said rules, or bounds: Provided they shall, within forty days after being taken in execution, give satisfactory security to the sheriff, (for the solvency of which security the sheriff shall be answerable,) that they will not only remain within the said bounds, but, will also, within forty days, render to the clerk of the court for the district, where they shall, respectively, be confined, a schedule, on oath, or affirmation, of his, or her, whole estate, or of so much thereof, as will pay and satisfy the sum due on the execution, by force of which he, or she, shall be so confined.—(b.)

IV. In cases, where application shall be made by persons in confinement, under process issued from the court of common pleas to the district sheriffs, such persons may make such surrender of their estates and effects, to the three nearest justices of the peace, who shall receive and transmit such schedule to the clerk of the said court, without delay.—(a.)

V. If any person committed on execution, as aforesaid, shall not give in such schedule agreeably to the tenor of his, or her, bond, he, or she, shall not be any longer entitled to the benefit of the prison rules, but his, or her, bond, shall be forfeited, and assigned to the plaintiff.—(c.)

VI. Any person, who shall deliver in a false schedule of his estate, shall suffer the penalties of wilful perjury, shall be liable to be arrested again for the action, or execution, on which he was discharged, and forever be disabled to take any benefit from this act, or from the act for the more effectual relief of insolvent debtors.—(b.)

(b)—1788, P. L. p. 456. (a)—Ibid. p. 457. (c)—Ibid. p. 456.

## PRIVY TOKENS.

If any person shall falsely and deceitfully obtain any money, goods, or chattels, belonging to any other person, by means of any false token, or counterfeit letter, made in any other person's name, such person being thereof lawfully convicted, shall suffer such punishment, by setting in the pillory, and imprisonment for any time not exceeding one year, as shall be unto him, or her, adjudged and declared by the court, before whom the trial and conviction shall be had.—(d.)

## PUBLIC.

ALL accounts in the public offices of this state, and of the tax-collectors, shall be expressed in dollars, or units, dimes, or tenths, cents, or hundredth, and mills, or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.—(e.)

II. No sum of money shall be directed to be paid out of the treasury of this state, unless the same be done by authority of an act to be passed for that purpose; and no person indebted to the state shall be exempted, in part, or in the whole, from the payment thereof; nor shall the state be divested of any right, or interest whatever, for the purpose of vesting the same in an individual, but by an act of the legislature.—(a.)

III. If any person shall erect, or cause to be erected, any dwelling house, out house, or other building, or shall erect, or cause to be erected, any fence, wall, or paling, of any kind whatsoever, on any public lot, or square, whereon the gaols and court-houses in the several districts are erected; or shall use, hold, or occupy, any house, out house, or other building, heretofore erected on such square, or lot, he or she, for every such offence, shall, upon being thereof legally convicted, by indictment, be fined in a sum not less than one hundred dollars, nor more than one thousand: Provided nevertheless, that the gaolers of the respective districts, who reside in the gaols, shall not be subject to such penalty, for erecting, or using, any such building, or fences, for their private accommodation.—(b.)

(d)—1712, P. L. p. 56. (e)—1796, 2d Faust, p. 15. (a)—Ibid. p. 84.  
(b)—1809, Sess. Acts, p. 46.

## RENT.

WHERE goods, or chattels, are distrained for any rent reserved and due upon any demise, lease, or contract, whatsoever, and the tenant, or owner, of the goods so distrained, shall not within five days next after such distress and notice thereof, with the cause of such taking, left at the chief mansion house, or other most notorious place on the premises, charged with such rent, replevy the same with sufficient security, to be given to the sheriff, according to law, in such case, after such distress and notice, as aforesaid, and the expiration of the said five days, the person distraining shall, with the sheriff of the district, or his deputy, or with the constable of the precinct, where such distress shall be taken, cause the goods and chattels so distrained, to be appraised by two sworn appraisers, (whom such sheriff, his deputy, or the constable, shall swear to appraise the same, truly, according to the best of their understanding:) and, after such appraisement, the said goods and chattels may be sold for the best price that can be gotten for them, towards satisfaction of the rent, and of the charges of distress, appraisement, and sale, leaving the overplus, if any, in the hands of the sheriff, or other officer, for the owner's use.—(c.)

II. It shall be lawful for any person having rent arrear and due upon such demise, lease, or contract, to seize, and secure, any sheaves, or cocks, of corn, or corn loose in the straw, or hay, lying upon any part of the land, or ground, charged with such rent, or to lock up, or detain, the same, in the place where it shall be found, for, and in the nature of, a distress, until the same shall be replevied upon security, as aforesaid; and in default of such replevin, to sell the same, after appraisement thereof, as aforesaid: Provided nevertheless, that the corn, grain, or hay, so distrained, be not removed by the party distraining, to the damage of the owner thereof, out of the place, where the same shall be found and seized, but be kept there, as impounded, until the same shall be replevied, or sold.—(c.)

III. Upon any pound breach, or rescous of goods, or chattels, distrained for rent, the person thereby aggrieved, shall, in a special action on the case, for the wrong thereby sustained, recover triple damages and costs of suit, against the offender, or offenders, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use, or possession.—(c.)

**IV.** In case any distress and sale, as aforesaid, shall be made, for rent, pretended to be arrear and due, when in truth no rent is due to the party distraining, or in whose name, or names, or right, such distress shall be taken, the owner of such goods and chattels so distrained and sold, his executors, or administrators, shall, by action of trespass, or on the case, recover from the wrongdoer, double the value of the goods, or chattels, so distrained and sold, together with full costs of suit.—(b.)

**V.** All writs of replevin shall be returnable immediately, and the sheriff, in whose office such writ shall be lodged, shall make return thereof accordingly.—(c.)

**VI.** The plaintiff, in all actions of replevin, shall declare, within one month from the judgment of the writ in the sheriff's office, without any rule, or notice, for that purpose; and on the failure of the sheriff, to make return thereof, within the period aforesaid, the plaintiff may substitute the same, as in cases of loss; and if the plaintiff do not declare, the defendant shall be at liberty to enter up judgment of non pross, and proceed as, in such cases, is provided by law.—(c.)

**VII.** In all cases of replevin, the security given by the plaintiff shall be bound, not only for the return of the goods distrained, but also in case the said goods shall be insufficient to satisfy the rent, for which the distress is made, or the same shall be prolonged, for the full amount of the rent distrained for, and all costs of suit, that may be adjudged against the plaintiff in the action; and it shall be the duty of the sheriff, executing the writ of replevin, to take bond and security for such amount, as will be sufficient to cover all such sums.—(a.)

**VIII.** No slave shall be distrained for rent, unless such slave bona fide belong to such person, or persons, as shall be legally chargeable with such rent.—(b.)

**IX.** No goods, or chattels, being on any messuage, lands, or tenements, leased for life, or lives, term of years, at will, or otherwise, shall be taken under any execution, on any pretence whatsoever, unless the party, at whose suit such execution is sued out, shall, before the removal of such goods from the premises, by virtue of such execution, pay to the landlord of such premises, or his agent, all such sums of money, as shall be due, for the rent thereof, at the time when such goods, or chattels, are taken in execution: Provided, that such rent arrear, do not amount to more than one year's rent; and, in case the arrear shall exceed one year's rent, the party, at whose suit the execution is sued out, paying the landlord, or his agent, one year's rent, may proceed to execute his judgment; and the sheriff, or other officer, shall levy, and pay to the plaintiff, as well the

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(b)—1712, P. L. p. 86. (c)—1808, Sess. Acts, p. 37. (a)—1808, Ibid. p. 38. (b)—1799, 2d Faust, p. 251.

Amount of the rent paid, as aforesaid, as the execution money.—(c.)

X. In case any lessee for life, or lives, term of years, at will, or otherwise, shall fraudulently, or clandestinely, convey away, or carry off his goods, or chattels, from the demised premises, with intent to prevent the landlord, or lessor, from distraining for arrears of rent due and payable therefor, it shall be lawful for such landlord, or any person, by him, for that purpose, lawfully authorized, within the space of five days next ensuing the conveying, or carrying off, of such goods, or chattels, as aforesaid, to take and seize the same wherever they shall be found, as a distress for the said arrears of rent; and the same to dispose of in such manner, as if they had actually been distrained by such landlord for such arrears of rent, in, and upon, such demised premises: Provided, that nothing herein contained shall be construed to empower such landlord, or lessor, to take, as a distress for arrears of rent, any goods, or chattels, which shall have been sold *bona fide*, and for a valuable consideration, before such seizure made.—(d.)

XI. It shall be lawful for any person having rent due upon any lease for life, or otherwise, ended and determined, to distrain for such arrears, after such determination, in the same manner, as he might have done, if such lease had not been ended, or determined: Provided such distress be made within the space of six calendar months after the determination of such lease, during the continuance of the lessor's title, or interest, and during, also, the possession of the tenant, from whom such rent became due.—(a.)

XII. Any person having rent arrear and due, upon any lease for life, or lives, may bring an action of debt for such arrears, in the same manner, as if such rent were due and reserved upon a lease for years: Provided that nothing hereinbefore contained, shall hinder, or prejudice, the State in recovering and levying any debts, fines, or forfeitures, due thereto; but that the same shall be recovered and levied, as heretofore.—(d.)

XIII. All tenants, whether for life, or years, by sufferance, or at will, or persons, coming in under, or by collusion with, them, who shall hold over after the legal determination of their estate, after demand made, in writing, for delivering possession thereof, by the person having the reversion, or remainder, or his agent, for the space of three months after such demand, shall forfeit double the value of the use of the premises, recoverable by any legal action, or by distress, as in cases of rent reserved and payable quarterly.—(b.)

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(c)—1712, P. L. p. 97. (d)—Ibid. p. 98. (b)—1808, Sess. Acts, p. 38.

**XIV.** In case any tenant shall give notice, in writing, of his intention to quit the premises, and shall not accordingly deliver the possession, at the time, in such notice mentioned, such tenant, his executors, or administrators, shall pay the landlord, double the rent, which he would otherwise have been liable to pay, recoverable as aforesaid.—(b.)

**XV.** Every lease, or written agreement, hereafter entered into, for the renting and leasing of lands and tenements, shall absolutely and unequivocally end and determine at the period therein stated, without its being obligatory on the tenant, or the landlord, to give a written notice: And no parol lease shall give a tenant a right of possession, for a longer term than twelve months from the time of entering on the premises; and all such leases shall be understood to be for one year, unless it be stipulated to be for a shorter term.—(c.)

**XVI.** Where any person, or persons, shall have leased, or demised, in writing, any land, or tenement, to any other person, or persons, for a term of one, or more years, or at will, and he, she, or they, or his, her, or their, heirs, or assigns, shall be desirous, upon the determination of the lease, to have again, and re-possess, his, her, or their, estate, so demised, and the lessee, or tenant, shall refuse to deliver back the same, it shall be lawful for such lessor, or lessors; his, her, or their, heirs, or assigns, to complain thereof to any two justices of the peace, or of the quorum, or to one justice of the peace and one of the quorum, of the district, where the demised premises are situated; and, upon due proof, made before the said justices, that the said lessor, or lessors, had so leased, or demised the premises, to the tenant then in possession, or to some person, or persons, under whom such tenant claims, or came into possession; and that the term, for which the same was demised, or leased, is fully ended, it shall be lawful for such two justices, to whom complaint shall be made, as aforesaid, and it shall be their duty forthwith, to place the names of twenty-four neighboring freeholders, in a box, and from the said twenty-four, draw eighteen; which eighteen they shall direct the sheriff, or a constable, of the district, to summon to attend at a certain time and place, to be appointed by them; and from the said eighteen freeholders so summoned, twelve shall be drawn in the same manner, who shall then be impanelled to try the facts: Provided nevertheless, that if, from the said eighteen so summoned, the number of twelve cannot, from any cause, be completed, the said justices are authorized to complete the said number of twelve, from the remainder of the freeholders, originally selected by them: And the said justices shall also summon the lessee, or tenant, or other person, claiming, or come into possession

(b)—1808, Sess. Acts, p. 38. (c)—1817, Ibid. p. 36.

under the said lessee, or tenant, at the same time, to appear before them, the said justices and freeholders, to shew cause, if any he, or she, has, why restitution of the possession of the demised premises should not be forthwith made to such lessor, or lessors, his, her, or their, heirs, or assigns: And if, upon bearing the parties, or in case of the tenant's, or other person, or persons, claiming, or coming into possession, under the said lessee, or tenant, neglecting to appear, after being summoned, as aforesaid, it shall appear to the said justices and freeholders, that the said lessor, or lessors, had so leased, or demised, the premises, to the tenant then in possession, or some person, or persons, under whom such tenant claims, or came into possession, and that the term, for which the same was demised, or leased, is fully ended, it shall, in every such case, be lawful for the said two justices, to make a record of such finding by them, the said justices and freeholders; and such judgment shall be final and conclusive between the parties, as to the facts directed to be decided by it: And, thereupon, the said justices shall issue their warrant, under their hands and seals, directed to the sheriff of the district, commanding him, forthwith, to deliver to the lessor, or lessors, his, her, or their, heirs, or assigns, full possession of the demised premises; and to levy the expenses incurred by the investigation of the case, and taxed by the justices, of the goods and chattels of the lessee, or tenant, or other person in possession, as aforesaid; and the sheriff, on receiving the aforesaid warrant, to put the landlord, or lessor, in possession, shall, within ten days, put the said landlord, or lessor, in possession of the premises; and, for that purpose, it shall be lawful to break open doors, should he be resisted, and he may call to his assistance the posse comitatus, if necessary; and should the sheriff refuse, or neglect to perform his duty, he shall, in addition to an action for damages, forfeit and pay the sum of five hundred dollars, to be recovered by the party aggrieved in an action of debt: Provided nevertheless, that nothing herein contained shall be so construed as to deprive any landlord, or lessor, of any remedy heretofore allowed him.—(a.)

XVII. The freeholders so summoned as aforesaid, shall be liable to the same objections to be made by either of the parties in the case, as jurymen are; and shall be liable to the same fine for non-attendance, without sufficient cause, as jurymen now are for non-attendance at the courts: the said fine to be imposed by the court of common pleas of the district, at its next session thereafter; and it shall be the duty of the justices to return the names of those freeholders who shall so neglect to attend, into the office of the clerk of the said court; who is here-

(a)—1812, Sess. Acts, p. 39, and 1817, pp. 36-7.

## ROADS.

by commanded to proceed against the said defaulters, as against non-attendant jurymen.—(b.)

XVIII. The sheriff, or constable, shall receive, as a compensation for his summoning the said freeholders, the sum of ten dollars, and the justices, for trying the case, the sum of ten dollars; the said sums to be paid by the party, against whom the judgment is obtained; and the said justices are empowered to issue executions for the said sums against the party so liable to pay them.—(c.)

XIX. It shall not be lawful for any tenant to make alterations, or remove buildings, erected upon the leased premises, without permission first had in writing, under pain of forfeiting the residue of the unexpired term of said lease, or agreement, parol, or written; which forfeiture shall be ascertained by a justice of the peace or quorum, with the jurors to be drawn in the same manner, and with like powers, as where a landlord is to be placed in possession as aforesaid.—(c.)

## ROADS.

If any person, chosen, or appointed, a commissioner of the roads, shall refuse to act, or neglect to do the duty of a commissioner, he shall forfeit a sum not exceeding twenty dollars, (o) to be recovered in a summary way, on proof of such refusal or neglect, before one of the judges of the court of common pleas, in Charleston, or at the circuit court of the district, where the defaulter resides; and the money so recovered, shall be paid to the acting commissioners of such district, or parish, to be disposed of for repairing, and keeping in repair, the high roads, bridges, causeways, creeks, and water courses, as the said commissioners, or a majority of them, shall think fit.—(a.)

II. If any vacancy shall happen among the said commissioners, by refusal to act, death, removal out of the parish, or district, or otherwise, the remaining commissioners, or a majority of them, shall choose by ballot, at their stated meetings, some fit person to fill up such vacancy; and the person so appointed, shall be vested with the same powers and authority, and subject to the same fines and penalty for refusal to act, or neglect of duty, as any other commissioner: Provided, that no person shall be compelled to act as a commissioner for more than three years in six.—(a.)

(b)—1817, Sess. Acts, p. 36. (c)—Ibid. p. 37. (o)—1795, 3d Faust, p. 54.  
(a)—1788, P. L. p. 444.

**III.** Every person elected, or appointed, a commissioner, shall be liable to serve in that office for the term of three years from the day of his election; and if, at the expiration of the said term, any commissioner shall wish to decline acting, he shall give three months' previous notice of such intention to resign, and shall also nominate some person to be his successor; and the person so nominated, shall, if approved of by a majority of the remaining commissioners, be deemed a commissioner for three years, in the room of the one so declining, and shall be vested with the same powers, and subject to the same penalties for refusal to act, or neglect of duty, as any other commissioner.—(a.)

**IV.** All the commissioners shall meet to form a board for their respective parishes, and districts, at such place, as a majority of them shall think fit, except where otherwise directed by law, at least twice in every year, to-wit: on the first Mondays in April, and August; and the said commissioners, or a majority of them, so met, shall lay out, make, and keep in repair, all such high roads, private paths, bridges, causeways, and water courses, as have been, or shall be established by law, or as they shall judge necessary in their several parishes and districts, excepting over the lands of persons, who shall signify to the said commissioners some opposition; in which case no new road shall be opened without the permission of the legislature: (n) and may divide the several parts of the said roads amongst them, the said commissioners, for the particular share of each, or any, of them, as to them shall seem most convenient and proper. And the said board of commissioners shall declare and ascertain, when the same is not ascertained by law, or where doubts may arise concerning the same, what inhabitants are liable to work on any road, or part of a road, in their respective parishes, or districts; and to call on all the inhabitants within the same, to make a return, on oath, of all the male slaves belonging to them, or under their management and direction, from sixteen to fifty years of age, who reside in such parish, or district, for the greatest part of the year, to such persons, at such place, and within such time, as they shall appoint: And the said commissioners, or any of them, shall have authority to administer the following oath: "I, \_\_\_\_\_ do swear (or affirm) that the return now made by me of the number of male slaves, from sixteen to fifty years of age, in the parish (or district) of \_\_\_\_\_ belonging to \_\_\_\_\_ is true, according to the best of my knowledge." And if any inhabitant shall neglect or refuse to make such return, the said commissioners, or any three of them, shall be authorized to make an assessment on such defaulter, according to the best information they shall re-

(a)—1788, P. L. p. 444. (n)—1817, Sess. Acts, p. 80.

ceive, of four dollars, for every such male slave so refused or neglected to be returned, to be recovered by warrant of distress from any three of the said commissioners.—(a.)

V. No board of commissioners shall, hereafter, have power to grant, or open, any new road, over the lands of persons, who shall signify to the said board any opposition, unless by permission of the legislature: Provided however, that no new road shall be granted by the legislature, unless upon a representation of the board of commissioners of the district, where the said road is to be laid out, certifying the propriety and utility thereof; and also, that three months' previous notice that such representation would be made, had been given to the persons opposed thereto, as aforesaid, to enable them to make counter representations to the same.—(b.)

VI. Whenever the commissioners of the roads in any parish, or district, shall fail to meet and form a board, as by law directed, the several persons, being commissioners, who shall have failed to attend, for the purpose of forming such board, shall be fined in the sum of twelve dollars, to be recovered by warrant under the hand of the chairman of the board, or of any three members thereof: and if any person, being a commissioner of the roads, shall neglect to appear at any time, when the board, to which he belongs, is required to meet, he shall be fined in the sum of six dollars; although the commissioners may have actually formed a board in the absence of such person; to be recovered by warrant under the hand of the chairman, or any three members thereof: Provided nevertheless, that nothing in this act contained shall be construed to impose any fine upon any person, that may have a reasonable excuse, or justification, to be approved of by the board of commissioners.—(c.)

VII. The said commissioners, or a majority of them, in their respective divisions, shall have power to appoint proper persons to summon the inhabitants to work upon the roads and bridges; and if any person so appointed shall refuse to act, he shall forfeit a sum not exceeding twelve dollars, to be recovered by warrant of distress under the hands of any three of the commissioners; and the said commissioners may appoint overseers on such roads, or parts of roads, whilst the inhabitants are working on the same, as to them shall seem necessary and proper; and the overseers so appointed shall have authority moderately to correct all such male slaves, as shall refuse, or neglect, to do their work; and if any white person shall refuse, or neglect, to work, or to do his duty when in place, the said overseer shall

(a)—1788, P. L. p. 444—See also 2d Faust, p. 55, and sec. v.—No free person, or slave, compelled to work on any road, one part of which does not pass within ten miles of his, or her residence, or place of employment, for the greater part of the year.—See Sess. Acts, 1820, p. 46.

(b)—1817, Sess. Acts, p. 80. (c)—1820, Ibid. p. 53.

return the name of such white person to the commissioners, who shall have authority to fine the said person two dollars for the first fault, and ten dollars if repeated; and on non-payment of the same, such defaulter shall be immediately committed to the gaol of the district, where he resides, there to remain ten days, or until the fine be paid: And if any person shall refuse to act as an overseer, without giving a sufficient reason for such refusal, he shall forfeit the sum of eight dollars, to be recovered, as aforesaid; (a) but no person shall be compelled to serve more than one year in three.—(b.)

VIII. Every person hereafter appointed overseer of the high roads in this state, shall forfeit and pay the sum of twenty dollars for every neglect of duty, to be recovered by warrant of distress under the hands of any three of the commissioners, to be applied in aid of the funds for keeping the high roads in repair.—(c.)

IX. The several commissioners, according to their respective divisions, shall, whenever they think it necessary, summon, by six days' previous notice, all the male inhabitants from sixteen to fifty years of age, liable to work on the said high roads, private paths, bridges, causeways, creeks, and water courses; and if any person shall refuse or neglect to go, or send, his, or her, male slaves, when thereunto summoned, as aforesaid, by the commissioners, or by any person by them, or any three of them, to be appointed, every such person shall forfeit and pay, for the use of the roads and bridges, two dollars for himself, and one dollar, per day, for every male slave so neglected or refused to be sent; to be recovered by immediate warrant under the hands of any three of the commissioners, against any of the goods and chattels of the defaulter; which, after ten days' public notice, shall be sold for the purpose of paying the said fine, and the charges accruing thereon; the overplus, if any, to be returned to the defaulter: And the said commissioners, or any one of them, in their respective districts and parishes, shall, whenever it may be necessary to repair any bridge, or remove any tree, or other obstruction, in the public roads, be authorized, upon giving one day's notice, to call out a sufficient number of hands most contiguous thereto, for that purpose: and if any person, so summoned, shall refuse to go, or to send, his, or her, hands, he, or she, shall incur all the penalties imposed for not sending them when summoned by six days' previous notice; and the work done at one day's notice, shall be credited, when the hands are called out generally to work the roads: (d) Provided, that no white person, or slave, shall be liable to work on any road, path, bridge, or causeway, more than twelve days in

(a)—2d Faust, p. 55. (b)—1785, P. L. p. 285. (c)—1820, Sess. Acts, p. 48. (d)—1821, Ibid. p. 52.

## ROADS.

one year. And it shall be lawful for the said commissioners to exempt the domestic male slaves employed as waiting men, or house servants, by any person, upon such persons' substituting in the room of every male slave so exempted, an able bodied female slave, and making oath before the said commissioners, that they are not field slaves, or other labourers, whom they desire to screen from the operation of this law.—(c.)

X. Every person liable to work on public roads, shall work upon all such roads, within the distance prescribed by law, whether the same be measured, or calculated by the course of any public road, or that of any private road.—(d.)

XI. The said commissioners, or a majority of them, in their respective divisions, shall be authorized to cut down, and make use of, any timber, wood, earth, or stone, in or near the said high roads, private paths, bridges, creeks, and water courses, for the purpose of making, or repairing, the same, as to them shall seem necessary; and if any person, or persons, by themselves, or their slaves, or servants, shall, by any means, hinder, forbid, or oppose, the said commissioners, their servants, or workmen, from cutting down, or making use of any timber, wood, stone, or earth, in or near, the said high roads, or bridges, for the purpose of making, or repairing, the same, or shall in any manner stop up, or obstruct the passage on the said roads, or paths, laid out by the said commissioners, or shall hinder, forbid, or threaten, any traveller from travelling the said road, every person, for every such offence, shall forfeit the sum of eighty-five dollars and seventy cents, to be recovered, by summary process, before any one of the judges of the court of common pleas, at any of the circuit courts in the district where the offence was committed, or where the offender resides; the money to be disposed of for the use of such roads, paths, or bridges.—(e.)

XII. If any person shall stop up, alter, or do any manner of damage to, any of the high roads, private paths, bridges, or water courses, laid out by the commissioners, every such offender shall be summoned and required by the commissioners of that part, or precinct, where the offence was committed, forthwith to amend, repair, and clear the same; and in case of refusal, or neglect, shall be fined in any sum not exceeding twenty-one dollars and forty cents, for each time the said commissioners shall give such person notice to amend, repair, or clear the same, allowing three days between such notices; and on non-payment, to issue, immediately, a warrant of distress against the goods and chattels of such defaulter, and, after ten days' public notice, to sell the same for paying the said fine,

(c)—1788, P. L. p. 445. (d)—1796, 2d Faust, p. 133. (e)—1788, P. L. p. 445 and 2d Faust, p. 55.

and the charges accruing thereon; returning the overplus, if any, to the said defaulter: And in all cases, where any public road shall be injured, in consequence of the breaking of any mill dam, or by letting off water from any mill pond, by the raising of any gate, or gates, it shall be the duty of the owner, or owners, of such mill pond, or dam, to repair such injury, when hereunto required by the commissioners of the roads, within a reasonable time from such notice; and, in default thereof, the owner, or owners, of such mill dam, or pond, shall be liable to be indicted, and on conviction, shall be fined at the discretion of the court, not exceeding one hundred dollars, nor less than twenty.—(a.)

XIII. The several boards of commissioners, in their respective divisions, shall have power to agree with any person, or persons, to undertake the building of any bridges, and to pay such sums of money for defraying the charges of the same, by an assessment, in equal proportions, to be made on the principles of the general tax, (b) in their said several parishes and districts; and where any river, or creek, lies between two parishes, or districts, and the inhabitants of either of the said parishes, or districts, shall desire a bridge to be built over such river, or creek, the commissioners of both the said parishes, or districts, shall meet, and assess, and levy the same, rateably, and proportionably, on all the male inhabitants, from sixteen to fifty years of age, of both such parishes and districts; and the inhabitants of both the said parishes, or districts, shall likewise, from time to time, keep in repair, all such bridges lying between them, as aforesaid: Provided, that nothing herein contained, shall extend to any toll bridge.—(c.)

XIV. The commissioners of each division shall, and may, take any convenient timber for continuing, re-building, or repairing, framed bridges, paying such reasonable price for the same as they shall think fit; but all other bridges shall be built and repaired with the most convenient adjoining timber, without paying for the same.—(d.)

XV. The commissioners shall have power to hire as many slaves, as they may think necessary, to work on any cuts, or creeks, and to assess the same on the inhabitants of the several divisions, wherein such cuts, or creeks, may be.—(d.)

XVI. If any person shall wantonly, or wilfully, injure, or destroy, any bridge built, as aforesaid, or toll bridge, or cause-way, established by law, such person, on indictment and conviction, in the court of sessions of the district, where the offence was committed, shall be fined and imprisoned at the discretion of the court.—(c.)

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(a)—1821, Sess. Acts, p. 51. (b)—1814, Ibid. p. 64. (c)—1788, P. L. p. 446. (d)—1723, Ibid. p. 121.

**XVII.** All vessels, boats, and rafts, passing under any bridge, shall, before they come to the same, drop anchor, and drag through under the same; and if any vessel, boat, or raft, shall pass, or attempt to pass, under any bridge, without dragging, as aforesaid, every such vessel, boat, or raft, shall forfeit the sum of forty-two dollars and eighty-five cents, to be recovered by immediate seizure and detention of such vessel, boat, or raft, until the payment of the said sum, by warrant from any one of the commissioners for the said bridge, or by the person, or persons, to whom the said commissioners may have leased the same, or by information being given of the same to one of the judges of the court of common pleas in the district, where the offence was committed; the money, when recovered, to be applied to the re-building, or repairing, of such bridge.—(a.)

**XVIII.** When any road shall be laid out, altered, or mended, the commissioners of such road shall, if they think fit, give directions for leaving such trees standing, as shall be most convenient for shade for the said road; and if any person shall wilfully, or wantonly, cut down, or kill, any tree, growing within ten feet of the road laid out, as aforesaid, every such person shall, for each tree so cut down, or killed, forfeit the sum of twenty-one dollars and forty cents, to be recovered by warrant from any three of the said commissioners.—(a.)

**XIX.** The said commissioners, in their respective districts, shall cause all the public roads to be posted and numbered, and at each fork of the said roads, a pointer, declaring the direction thereof, to be fixed up: And upon the conviction of any person of having cut down, or destroyed, any of the posts and pointers erected on the several roads, such person shall pay the sum of ten dollars, to be recovered before any magistrate of the district, where such trespass shall be committed, and paid over to the board of commissioners, for the use of the roads.—(b.)

**XX.** Commissioners appointed for opening any new road, shall have all the powers vested in the commissioners of the high roads; (c) and, on the completion of every new road, the same shall fall under the authority of the commissioners of the roads, respectively: (e) And whenever any new road shall be opened by the authority of the legislature, or board of commissioners of roads, leading directly from any part of this state, to Charleston, Columbia, Hamburg, Camden, or Cheraw, the same shall be made thirty feet wide; and it shall be the duty of the commissioners of the roads to cause all roads heretofore laid out to any of the above places, to be cleared to the same width, and all other roads shall be cleared twenty feet wide.—(d.)

**XXI.** If two adjoining sets of commissioners, after due notice given of the time and place of meeting, by one set to the

(a)—1788, P. L. p. 446. (b)—1809, Sess. Acts. p. 75 and 76. (c)—1795,  
28 Faust, p. 62. (e)—Ibid. p. 61. (d)—1824, Sess. Acts, p. 50.

## ROADS.

55

other set of commissioners, do not agree to survey any new road between their divisions, then the first survey made by either of the sets of commissioners, shall stand good, and the adjoining commissioners shall be obliged to make their road to the said bounds, as laid out by the other board of commissioners, within six months after they are requested so to do by the said commissioners; and, upon refusal, every one of the parties refusing, shall forfeit to the commissioners aggrieved, for the use of their road, the sum of eight dollars and fifty-five cents, to be recovered by virtue of a warrant from any justice of the peace, who shall, upon application, by the commissioners aggrieved, as aforesaid, grant the same; and in case the commissioners in default shall refuse to comply with a second request of the adjoining commissioners, as aforesaid, the magistrate shall issue a second execution; and oftener, in case of complaint, if the said neglect is repeated.—(a.)

XXII. It shall be lawful for the several boards of commissioners to direct their summonses, warrants, or other processes, for the purpose of collecting fines, or other monies, due to the said boards, to all and singular the sheriffs of this state, who shall proceed to serve, or execute, the same according to law.—(b.)

XXIII. It shall be the duty of the commissioners of roads, in the several districts and parishes, to elect some person as treasurer, who shall enter into bond with securities, to be approved by a majority of the commissioners of each district, or parish, payable to the State of South-Carolina; in such penal sum as the said commissioners of the roads shall deem sufficient, for the faithful discharge of the duties of his office; which bond shall be deposited in the treasury of the division, in which the said treasurers may respectively reside; and it shall be the duty of the said treasurers to return to the clerks of the courts, in which they respectively reside, an account of all monies due to the commissioners, for whom they are treasurers, as well as an account of the receipts and expenditures, on, or before, the first Monday of September, in every year; and if any of the said treasurers shall fail to make his returns, as required, he shall forfeit and pay the sum of one hundred dollars; to be recovered by action of debt in any court of law having competent jurisdiction; and the said treasurers shall, respectively, have and receive for their trouble, two and a half per cent. on all sums received, and two and a half per cent. on all sums paid away by them.—(c.)

XXIV. It shall be the duty of the solicitor for the district, in which any part of the high road may have been, or shall be,

(a)—1723, P. L. p. 120. (b)—1807, Sess. Acts, p. 48. (c)—1818, Sess. Acts, p. 6 and also, 1810, p. 14.

**SABBATH.**

diverted from its original course, unless by authority of law, on information of any two persons, to commence a suit against any person, or persons, who shall have altered the said road without authority, in order to compel the parties offending, as soon as may be, to restore, at their own expense, the high road to its course, as established by law.—(h.)

**XXV.** No petition shall hereafter be received by the legislature, praying for the establishment of any road, unless application shall have been first made to the commissioners of roads, unless the same shall extend through more than one county, or parish: (o) nor shall any bridge, or ferry, hereafter be established by law, unless the person, or persons, petitioning for the same, shall have given notice to the commissioners of roads, in the district, or districts, in which such bridge, or ferry, is intended to be established, at least six months before the session of the legislature, and shall bring to the legislature a certificate of the same from the board of commissioners.—(m.)

**XXVI.** The fines, penalties, and forfeitures, inflicted and assessed by the said commissioners, shall be disposed of for repairing and keeping in order, the high roads, bridges, causeways, creeks, and water-courses, in such manner as they, or a majority of them, may think fit.—(n.)

**XXVII.** If the commissioners of the roads for any parish, or district, shall not make a board to transact business, in any one year, the said board shall be considered as dissolved.—(e.)

**SABBATH.**

No person of and description shall do any worldly labor, business, or work, of their ordinary calling, upon the Lord's day, (works of necessity and charity excepted;) and every person of the age of fifteen years, or upwards, offending in the premises, shall, for every such offence, forfeit the sum of twenty-one cents.—(b.)

**II.** No person shall publicly cry, shew forth, or expose to sale, any wares, merchandize, fruit, herbs, goods, or chattels, whatsoever, on the Lord's day; and every person so offending shall forfeit the goods so cried, or exposed to sale.—(b.)

**III.** No public sports, or pastimes, as foot-ball playing, horse-racing, or other unlawful games, or exercises, whatsoev-

(h)—1796, 2d Faust, p. 133. (o)—ibid. p. 134. (m)—1809, Sess. Acts, p. 74. (n)—1795, 2d Faust, p. 55. (e)—1821, Sess. Acts, p. 52. (b)—1712, P. L. p. 19.

er, shall be used on the Lord's day; and every person offending herein shall forfeit, for every offence, the sum of twenty-one cents.—(b.)

IV. No person keeping any public house of entertainment, shall suffer any person whatsoever, excepting strangers, or lodgers in such house, to abide, or remain therein, or in their out-houses, yards, orchards, or fields, drinking, or idly spending their time on the Lord's day, under the penalty of forfeiting the sum of twenty-one cents for every person offending, payable by themselves, respectively, who shall be found so drinking, or abiding in any such public house, or the dependencies thereof, as aforesaid, and the like sum of twenty-one cents, to be paid by the keeper of such house, for every person by them entertained.—(b.)

V. If any person in this state, shall, on the Lord's day, commonly called Sunday, employ any slave in any work, or labor. (works of absolute necessity, and the necessary occasions of the family only excepted) he, or she, so offending, shall forfeit the sum of three dollars and five cents for every slave they shall so work, or labor.—(c.)

VI. Every justice of the peace, within his district, or parish, shall have authority to convene before him, any person whomsoever, who shall offend in any of the particulars before mentioned; and upon his own view, or the confession of the party, or on proof by any witness, on oath, the said justice, or justices, shall issue a warrant under hand and seal, to some constable of the parish, or district, where such offence shall have been committed, to seize the said goods so cried, shewn forth, or put to sale, as above said, and to sell the same; and as to the other penalties and forfeitures, to impose the same, and to levy the said forfeitures by distress and sale of the offender's goods, returning the overplus, if any, after payment of such forfeiture, or penalty, and all lawful charges: Provided, that nothing herein contained shall be construed to prohibit the dressing of meat in families, or the dressing, or selling of meat, in inns, victualing houses, or other public houses, for such as cannot be otherwise provided; nor to the buying and selling of milk, before nine o'clock in the morning, and after four o'clock in the afternoon: And provided also, that no person shall be prosecuted, or molested, for any of the before mentioned offences, unless such prosecution be commenced within ten days after the commission of the offence.—(d.)

VII. No person shall, upon the Lord's day, serve or execute, or cause to be served, or executed, any writ, process, warrant, order, judgment, or decree, except in cases of treason, felony, or breach of the peace; and every writ, process, warrant, judg-

(b)—1712, P. L. p. 19. (c)—1740, ibid. p. 168. (d)—1712, ibid. p. 20.

## SALARIES AND FEES.

ment, order, or decree, so served, shall be utterly void; and the person so serving, or executing the same, shall be liable for damages to the party grieved, in the same manner, as if he had done the same without any writ, process, order, warrant, judgment, or decree, at all; and moreover, every writ, process, warrant, order, judgment, or decree, served, or executed, on any person during the time of his being imprisoned, or detained, on account of any such writ, process, warrant, order, judgment, or decree, so served, or executed, on the Lord's day, shall be void to all intents and purposes.—(a.)

**X.** All and singular the forfeitures and penalties aforesaid, shall be paid to the commissioners of the poor, for the use of the poor of the district, where the offence shall be committed, saving only, that it shall be lawful for any justice, out of the said forfeitures, or penalties, to reward any person, who may give information of any of the said offences, at his discretion: Provided, such reward do not exceed the third part of such penalty, or forfeiture.—(a.)

**X.** If any action shall be commenced against any person, for any thing done in pursuance hereof, the defendant may plead the general issue, *not guilty*; and upon issue joined, give the act of assembly and the special matter in evidence: And if the plaintiff, or prosecutor, become non-suit, or suffer a discontinuance, or if a verdict pass against him, the defendant shall recover triple costs.—(d.)

## SALARIES AND FEES.

**T**HE annual salaries herein after specified and enumerated, and no others, shall be paid, taken and received by the public officers of government herein after mentioned, in lieu of all other sums of money whatever, viz:

		<i>Dolls. cts. ms.</i>
The governor,	c	3,500 00 00
Secretary to the governor,	b	428 00 00
Associate judges, each,	c	3,500 00 00
Each judge of the court of equity,	c	3,500 00 00
Attorney-general, in lieu of all charges against the public, where persons accused of offences shall be found guilty, and shall swear off, or where they shall be acquitted, and for giving advice to the governor in matters of public concern,	c	1057 20 00

(a)—1712, P. L. p. 20. (d)—Ibid. p. 21. (b)—~~1st~~ Faust, p. 32.  
(c)—1817, Sess. Acts, p. 41.

Dolls. cts. ms.

Each circuit solicitor, in lieu of all charges against the public, where persons accused of offences shall be found guilty, and shall swear off, or where they shall be acquitted in their respective circuits, for giving advice to the governor in matters of public concern, and for attending the legislature at their sittings, in order to draw and engross all such bills and ordinances, as they shall be directed to do by either branch of the legislature,	c	700	00
Commissioner of the treasury, (Charleston)	a	2,648	00
Commissioner of the treasury, (Columbia)	g	2000	
Each messenger of the senate and house of representatives, clerk hire included,	g	214	30
Each door-keeper,	h	214	30
Keeper of the state-house,	g	86	72
Powder inspector and arsenal keeper,	h	428	60

II. The several and respective fees herein after mentioned, and no others, shall be paid, received and taken in the respective public offices in this state, and by those entitled to fees, throughout the same, for the different services specified, in lieu of all other demands whatsoever, for said services, viz:

*Secretary of State.*

For every search,	m	14	3
For a commission for a place of profit,	m	3	21
For entering satisfaction on a mortgage,	m	21	4
For recording a mark, or brand,	m	21	4
For recording, or copying, any writing, for every copy sheet containing ninety words,	m	8	9
For drawing a proclamation, and copy to the printer, to be paid by the state,	m	1	7
For a militia commission, to be paid by the state,	m	85	7
For attending the courts of justice, with records,	m	64	3
For finding the wax, and appending the (great) seal to the laws, for each seal, to be paid by the state,	m	42	9
For a general commission of the peace for any county or district, to be paid by the state,	m	2	14
For a separate commission of the peace, to be paid by the state,	m	53	6

(c)---1817, Sess. Acts p. 41. (a)---1st Faust, p. 357. (g)---Ibid. p. 358, and also appropriation act. (h)---Ibid. p. 4. (m)---Ibid. p. 5. (n)---Ibid. p. 6.

## SALARIES AND FEES.

	Dolls. cts. ms.
For making out a grant of land, recording, and fixing the seal,	n 2 14 6
For a testimonial, with the great seal,	n 1 7 1
For registering the certificate of a single person becoming a citizen,	o 25 1
For a family not exceeding three,	50
For a family exceeding three,	1

*Surveyor-General.*

For every search,	a 4 3
For copying a plat and certificate,	a 1 7 1
For receiving and recording a plat, and sending the same to the secretary's office, to be passed into a grant,	a 2 14 3
For a certificate in all other cases,	a 32 1
For a deputation and instructions to a deputy-surveyor,	a 1 7 1

*Deputy-Surveyor.*

For surveying every acre of land,	b 9
For making out a fair plat, certifying, signing, and returning the same,	b 2 14 3
For running old lines for any person, or between parties, where any dispute arises, or by order of court, while they are on the survey, per day,	b 3

*Commissioner of Locations.*

For receiving applications, making entries, and granting warrants under hand and seal of office,	b 64 1
For recording a plat, and sending it to the surveyor-general's office,	b 1 50
For every search,	b 14 9

*Register of Meane Conveyances.*

For a search,	b 14 3
For entering satisfaction on a mortgage,	b 21 4
For recording or copying deeds, each copy sheet,	b 8 9
For recording, or copying, a plat,	b 1
For a certificate from the office,	b 42 9

*Clerks of the Senate and House of Representatives.*

For any copy, or extract, from the journals of either house, except to a member of either	
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(a)—1817, 1st Faust, p. 6. (o)—1797, 2d Faust, p. 273. (u)—1st Faust, p. 16. (b)—Ibid. p. 17.

## SALARIES AND FEES.

361

		<i>Dolls. cts. ms.</i>
For every search,	b	8 9
For every search,	b	14 3
<i>Ordinary.</i>		
For a marriage license, bond and registering, c	4	28 6
For a citation, and recording, c	53	5
For qualifying administrators, bond, letters of administration, and warrant of appraisement, recording letters, and oath, c	6	8
For proving a will, probate, recording and filing the will, and certified copy, where it does not exceed four copy sheets, § 2; and for every other copy sheet, c	8	9
For qualifying executors, letters testamentary, and recording, c	1	7 1
For warrant of appraisement, oath, and recording, c	1	7 1
And if renewed, c	53	6
For filing renunciation, and recording, c	42	9
For a deditimus to prove a will, and qualify executors or administrators, and copy of oath, c	1	50
For guardianship bond, letters, and recording, c	3	
For entering caveat, or withdrawing, c	42	9
For a search, c	14	3
For hearing a litigated cause, c	3	
For swearing and examining each witness, c	10	7
For recording or copying any other writing, per copy sheet, c	8	9
For filing petition for sale of testator's, or intestates' effects, examining into the propriety of the proposed sales, and endorsing order thereon, c	1	
For examining the accounts of executors, or administrators, vouchers, and filing, for the first year's accounts, § 3, and for every other year's, c	1	7 1
<i>Coroner.</i>		
For an inquisition by jury taken on view of a dead person, and return, to be paid by the state, d	8	57 2
For every service done by the coroner, the same fees as are payable to the sheriff for the same services. —d.		
<i>Notary Public.</i>		
For taking depositions, and swearing witness, per copy sheet, g	10	7

(b)—1st Faust, p. 17. (c)—Ibid. p. 18. (d)—Ibid. p. 15. (g)—Ibid. p. 16.

## SALARIES AND FEES.

		Doll. cts. m.
		2 14 5
For every protest,	g	
For a duplicate of depositions, protest, and certificate, per copy sheet,	g	8 9
For each attendance on any person to prove any matter or thing, and certifying the same,	g	64 6
For every notarial certificate, with seal affixed,	g	53 6
<i>Justice of the Peace.</i>		
For oath and warrant in all criminal cases,	h	42 0
For a recognizance and return,	h	42 0
For a warrant in civil cases,	h	21 4
For a commitment,	h	21 4
For a warrant of hue and cry,	h	32 1
For taking a deposition,	h	32 1
For administering an oath,	h	10 7
For a probate to any writing, signing, and swearing witness,	h	42 1
For examining and swearing witnesses, and hearing and determining the cause,	h	21 4
For making entry of each horse, mare, ass, or mule,	p	50
For each head of neat cattle, hogs, sheep, and goats,		12 5
For writing and signing an execution,	h	25
For issuing attachment, with the oath of the party, bond, and return, agreeable to law,	h	1 7 1
For every appeal, with the proceedings, to the district court, from justice's judgment, bond and security inclusive,	h	64 5

*Constables.*

For serving a warrant,	h	53 6
For summoning a witness,	b	21 4
For summoning a coroner's jury and witnesses, all charges inclusive,	h	4 14 3
For putting a person in the stocks, to be paid by the state,	h	53 0
For serving an attachment on the effects of a person absconding, or about to abscond, making an inventory and return, returnable to the district court,	h	1
For the like services, where the attachment is returnable before a magistrate,	h	50
For whipping a person by lawful authority, to be paid by the state,	h	53 6

(g)—1st Faust, p. 16. (b)—Ibid. p. 19. (p)—1803, 2d Faust, p. 516.

## SALARIES AND FEES.

283

		<i>Dolls. cts. m.</i>
For levying an execution,	h	21
For poundage, or commissions, on all sums levied, 5 per cent.—m.		
For mileage in all criminal cases, attachments, and levying executions, and in no other case, for each mile out, but not for returning, m	5	3
For carrying a hue and cry, to be paid by the state, m	1	71 4
For his attendance in searching for stolen goods, for every day, at the request of the party complaining, m	64	3
 <i>Clergy of every settled Church of every denomination.</i>		
For registering every birth, marriage, or burial, m	32	1
For every search of the register, m	14	3
For every certificate from the register, m	32	1
For every citation read in church, m	1	7 1

### *Complainant's Solicitor, in Equity.*

For preparing and filing a bill in equity, with all necessary exhibits,	a	20
For drawing interrogatories in chief, for complainant's witnesses, and cross interrogatories, drawing and engrossing commissions, and attending to strike commissioners, where necessary, with proper instructions,	a	10
For arguing exceptions on points of law, before master, or a judge at chambers, where necessary, and attending thereon, including all charges incidental thereto,	a	5
For making and serving the briefs on the circuit judge,	a	5
For making and serving the briefs on the judges of appeal,	a	10
For drawing and engrossing decree, per copy sheet of ninety words,	a	2

### *Defendant's Solicitor.*

For preparing and filing answer, and all necessary exhibits,	a	20.
For drawing interrogatories in chief for defendant's witnesses, drawing and engrossing cross interrogatories and commissions, attending to		

(h)—1st Faust, p. 15. (m)—Ibid. p. 16. (a)—Sess. Acts, 1802, p. 36.

Dolls. cts. ~~per~~

For strike commissioners, and attending, where necessary, with instructions,	a	10
For arguing exceptions on points of law, before the master, or judge at chambers, when necessary, including notices, attendance, and all incidental charges relative thereto,	a	5
For making and serving briefs on the circuit judge,	a	5
For making and serving briefs on the judges of appeal,	a	10
For drawing and engrossing decree, per copy sheet of ninety words,	a	9
For drawing and presenting any petition, and all exhibits that may relate thereto, and briefs, if necessary,	a	10

*Master and Commissioner in Equity.*

For every summons,	b	37	5
For every affidavit in writing,	b	25	
For every oath administered,	b	6	2½
For taking a recognizance,	b	40	
For taking the oaths of every defendant to answer out of office, and attendance,	b	1	
For every attendance in office, on a reference by order of court, on the summons of either party, or their solicitors,	b	75	
For hearing and determining any contested matter, or order thereon, other than by order of reference,	b	1	
For making up and returning a report into court, but only one report to be charged in each suit,	b	8	
Commissions on sales, under decrees of the court, two and a half per cent. for the first hundred dollars, and one per cent. on all sums above.	b		
For drawing each set of conveyances,	b	5	

*Register and Commissioner in Equity.*

For affixing the seal of the court to subpoena, or other writ, and signing the same,	b	25	
For affidavit of service of subpoena, or other writ,	b	25	
For examining witnesses, and taking down their depositions, per copy sheet,	b	9	
Exemplifications of proceedings in any cause, if required, per copy sheet,	b	9	

(a)—1808, Sess. Acts, p. 3d. (b)—Ibid. p. 3d.

		Dolls.	cts.	ms.
For all other office copies, if required, per copy sheet,	b	9		
For each search,		12	5	
But not more than one dollar for all searches, which may be necessary in any cause.	b			
For entering a cause for hearing,	b	12	5	
For examining a decree, affixing the seal thereto, and attending the judges in court to sign certificates of examination,	b	1		
For notifications to be inserted in gazette by order of court, and attendance on printer,	b	31	2	
For affixing every seal, and signing every commission to take answers and examine witnesses, or for other purposes,	b	50		

*Attorneys in the Superior Courts of Law.*

For filling up writs, signing, attendance to lodge the same with the sheriff, in cases where no bail is required, and all incidental charges, when settled before declaration filed,	c	4	28	6
For every extra copy of a writ and notice,	c	32		t
For all subsequent proceedings whatever, from the filing of the declaration, or obtaining interlocutory judgment inclusive, where no bail is required,	c	5	35	7
In all cases where special bail is required, extra,	c	1	50	
For all proceedings subsequent to the former, including final judgment and verdict,	c	3	21	4
For all other services whatever, including the whole proceedings, to the issuing of execution, inclusive,	c	1	28	5
For all exhibits in cases of covenant, per copy sheet,	d		8	9
For the jury, in each cause tried,	c	1	7	1

*In extraordinary cases.*

For every demurrer, joinder, and argument on a point of law,	d	5	35	7
For every motion for new trial, or for arrest of judgment, or special matter and argument,	d	5	35	7
For every renewal of writ, or execution,	d	1	7	1
For filling up every writ of subpoena and four tickets, inclusive,	d	1	7	1
Every rule to show cause in arrest of judgment, copy and notice, and motion for trial,	d	1	50	

(b)—1808, *Seas. Acts*, p. 35. (c)—1st *Faust*, p. 8. (d)—*Ibid.* p. 9.

## SALARIES AND FEES.

	Dolls. cts. m.
For preparing a commission to examine witnesses, where necessary, attending to strike commissioners, drawing interrogatories in chief, and instructions,	d 8 57 2
For commencing and prosecuting, and defending a suit by summary process,	g 4 28 6
For filling up writ of subpea and four tickets, inclusive, in do.	1 7 1
For all other services whatever, including the whole proceedings, to the issuing of execution, inclusive, in do.	c 1 28 5
In all cases of summary process, where the sum demanded is due upon contract, whether liquidated, or on open account, and does not exceed fifty dollars, only one half the foregoing fees.	b
For all services from the commencement to the end of the proceedings, surveyor's fees exclusive, in cases of dower and partition,	g 21 43
On writs of attachment, in addition to common costs, on bond, note, or account, except printer's bill,	g 12 85 5
In all cases of appeal from justices' decree,	g 2 00

*Defendant's Attorney.*

For appearance, filing bail, and imparlane, in	m 4 28 8
For drawing and filing plea, or demurrer, or other proceedings, previous to joinder in demurrer, or issue taken,	n 3 75
For verdict in cases for defendant, postea, bill of costs, and allowing taxation, copy, and notice, including all charges,	n 2 14 3
For drawing commission to examine witnesses, drawing interrogatories, attending to strike commissioners, and instructions, all incidental charges inclusive,	n 8 57
For copies of all exhibits necessary to be filed by defendant, per copy sheet,	n 8 9

*Attorney-General.*

Upon bill of indictment found, and trial before petit jury, and verdict, or confession,	n 15
Circuit solicitors entitled to the same fees.	p

(d)—1st Faust, p. 8. (h)—1809, Sess. Acts, p. 32. (g)—1st Faust, p. 9.  
(m)—Ibid. p. 10. (n)—Ibid. p. 11. (p)—Ibid. p. 165, and 2d Faust, p. 318.

SALARIES AND FEES.

667

Dolls. cts. ms.

*Clerks of the Sessions and Peace.*

On a <i>solle prosequi</i> ,	a	1	50	
When a bill is found, or thrown out,	a	3	21	4
Upon bill found, and trial before petit jury, and verdict,	a	4	28	6
On each writ of <i>venire</i> for summoning jurors,	a		32	1
On each writ of <i>habeas corpus</i> , or bench warrant,	a	1	50	
Each writ of subpoena and tickets,	a		42	9
For every order of bastardy, taking recognition, and all other proceedings,	a		53	6
For each order for restitution of goods,	a		25	
For each certificate to the coroner,	a		14	3

*Clerks of the Superior Courts of Law.*

For attending to sign a writ and affixing seal, b		21	4	
For filing a declaration, plea, replication, demurrer, rejoinder in demurrer, or other pleading,	b	16		
For copying a declaration, or other writing, per copy sheet,		8	9	
For entering every special order of court, or copy,		10	7	
For every search in the records, where the cause is ended,		14	3	
For signing a judgment,		42	9	
Drawing a bail piece, attending, and taking bail,		42	9	
For recording every judgment, or other writing, per copy sheet,		8	9	
For every recognizance,		42	9	
For receiving money in court, and paying it out again, one per cent.				
For attendance in any cause tried in court, swearing jury, and reading papers, and docketing the same,		42	9	
For swearing a witness,		10	7	
For every certificate, and signing,		10	7	
For administering every oath,		10	7	
For recording a verdict,		10	7	
For attending at the judge's chambers, on a special agreement,		42	9	
For making out a license for the admission of an attorney, administering the oath, and recording qualification,		6	42	9
For recording, or copying, a plat of land, and copy.†				

(a)—1st Faust, p. 12. (b)—Ibid p. 10. †—To be ascertained by courts, and taxed, 2d Faust, p. 34.

## SALARIES AND FEES.

	Dolls. cts. m <sup>s</sup> .
For issuing certiorari, or other special writ, and sealing.	75 1
For a <i>deditus potestatem</i> , and sealing,	42 9
For filing and entering return thereof,	21 4
For entering a decree on summary process, and execution,	42 9
For recording the mark and brand of a stock of cattle,	32 1
For each execution issued for fees due to the clerk's office,	21 4
All fees accruing after the issuing of the first execution to be paid for in cash.	c
In all cases of summary process, where the sum demanded is due on contract, whether liquidated or not, and does not exceed \$ 50, only half fees.	q
For ascertaining sum due to plaintiff in cases referred to him on motion,	5
<i>Sheriffs.</i>	
For serving every writ, or summons, or other process, taking bail, returning and proving service, and assigning bail bond,	d
For copy left at the defendant's residence, or where he cannot be personally arrested, returning and proving service,	1 56
For mileage from the court-houses of the districts, respectively, to the defendant's residence, or where he shall be found, or taken, but not for returning, each mile,	1 7 1
For commitment and release of any prisoner,	5
For summoning all juries, to the sheriff of each district court, per annum, to be paid by the state,	53 6
For serving any order, or rule of court, except public orders, or rules, and delivering a copy,	64 29
For serving every writ of subpoena and tickets, and returning the same,	42 9
In all cases of summary process, arising from contract, where the demand does not exceed fifty dollars, only half fees.	q
For serving a bench warrant, or warrant of a justice of the peace, and return thereof, and proving service in the same manner as on services of writs,	42 9
	85 7
(c)—2d Faust, p. 34. (q)—1809, Seas. Acts, p. 32. (g)—Ibid. p. 29.	
(d)—1st Faust, p. 12.	

Dolls. cts. ms.

For every return of a writ, where the goods, or persons, are not to be found,	42	9
For dieting white persons in the several gaols, and work houses, allowing one pound of bread and one pound of fresh, wholesome provisions, per day,	37	5
For dieting negroes, or other slaves, allowing wholesome food, per day,	25	
For executing a person condemned to death, to be paid by the state,	4	29 5
For putting a person in the stocks, branding, pillorying, whipping, or cropping, to be paid by the state, each,	1	7 1
For conveying a prisoner, on <i>habeas corpus</i> , or otherwise, from one district, or county, gaol to another, every mile he shall necessarily ride, going and returning, each mile,	5	3
For bringing up a prisoner on <i>habeas corpus</i> , and discharging, or conveying to prison, to be paid by the party, if solvent, if insolvent, then by the state.	1	7 1
All necessary expenses to be allowed to the sheriff, in addition to the charge immediately foregoing.		
For levying an execution on the goods of the defendant, and selling the same; for all sums, where the debt does not exceed four hundred and twenty-eight dollars and sixty cents, two and a half per cent. commissions; and for all sums where the debt exceeds that sum, one per cent. In all cases where the defendant, after the sheriff may have levied on the property, shall settle with the plaintiff, before actual sale, the sheriff shall be entitled to one-fourth per cent. only, besides all reasonable disbursements, and also fees for entering execution; but if the defendant shall pay the money to the sheriff, one per cent. in lieu of the one-fourth.		
For entering an execution lodged in his office only to bind the property, with directions not to levy,	53	6
For serving an execution against the body of a defendant, and return,	1	50
For every prisoner brought up for trial at the sessions, to be paid by the state.		32 1
For drawing each set of conveyances,	5	35 7

(a)—1805, Sess. Acts, p. 39. (b)—1810, ibid, p. 29. (d)—1st Faust, p. 12.

**III.** If any master and commissioner, register and commissioner, or solicitor in equity, shall take, or receive, any other or greater reward, for the services to be, by them, respectively, performed, as herein before mentioned, or shall invent, or contrive, any other or further fee, or reward, for any of the said services, with intent to evade the law, every such person so offending, shall, upon due proof and conviction, forfeit and pay the sum of two hundred dollars for each and every such offence, one half to the informer, and the other half to the state.—(m.)

**IV.** If any attorney, clerk, or sheriff, shall take, or receive, any higher, or greater, costs in cases of summary process, where the demand does not exceed the sum of fifty dollars, than are hereinbefore limited and directed, such attorney, clerk, or sheriff, shall forfeit and pay, for every such offence, the sum of fifty dollars, to be recovered in any court of record in this state, one half thereof to go to the party grieved, and the other half to the state.—(n.)

**V.** If any public officer, or other person, entitled to fees mentioned in the foregoing lists, in cases not provided for by the two sections immediately preceding, shall take, or receive, any other, or greater, fee, or reward, for any of the services in the said lists, respectively, mentioned, or shall invent, or contrive, any further fee, or reward, for any of the said services, the person so offending, on due proof and conviction thereof, shall, for the first offence, forfeit four times the amount of the sum so taken, or received, to be recovered in any court of record in this state, one half to the person who shall sue for the same, and the other half to the state; and for the second offence, shall stand divested of his office, and be rendered incapable of re-appointment to the same; and on information from the court, under hand and seal, the governor shall fill up the vacancy, if the legislature should not then be in session.—(o.)

**VI.** No person shall be compelled to pay any of the aforesaid fees, unless, at the time of the demand, or before distress of goods is made, an account thereof shall be delivered, signed by the officer to whom the same is due, specifying distinctly every article in words, at length, with the particular fee charged for it, and shall give a receipt for the same, if required.—(p.)

**VII.** No person shall be obliged, or liable to pay the cost of any suit at law, upon contract, brought within the summary jurisdiction of the court of common pleas, which shall be for a demand of not more than fifty dollars, unless a fair account, containing all the items of such cost, shall have been duly taxed and certified by the clerk of the district, when demanded,

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(m)—1808, Sess. Acts, p. 36. (n)—1809, Ibid p. 23. (o)—1791, 1st Part, p. 21. (p)—Ibid. p. 22.

## SHERIFFS.

571

wherein the suit has been instituted, upon which such cost has accrued.—(n.)

VIII. The several clerks and registers of the courts of justice, and the sheriffs throughout the state, shall collect, and receive, their own fees from the different suitors, or persons who are liable to pay the same, in the said courts of justice, respectively; except where the plaintiffs, or complainants, in any suit, shall reside in foreign countries, or without the limits of this state; in which case, the agents, or attorneys, of the said plaintiffs, or complainants, shall be answerable for the payment of the said fees.—(a.)

## SHERIFFS.

The sheriffs within the several circuit court districts in this state, shall be elected by the citizens within the same, respectively; and for that purpose an election shall be holden on the second Monday in January, and day following, in every year, in such of the circuit court districts, wherein there may then be vacancies, to be conducted in the same manner, by the same managers, and holden at such places as shall be appointed by law, for the conducting, managing, and holding of elections for members of the legislature; and if any circuit court district shall include any part of an election district, in which there may be no place of election established, the citizens in such election district, within the limits of such circuit court district, shall, and may vote at any place of election within the limits of such circuit court district; And it shall be the duty of the managers in the several circuit court districts, wherein such elections may be holden, to give twenty days' notice thereof, by advertising the same in the Gazette, if any be printed in the district, where such election is to be holden; and if no Gazette be printed in such district, then, by advertising the same on the court-house door, and at five other public places within such district; and the said managers shall meet at the court-house of the district, where such election shall have been holden, on the Thursday next after the election, to count the votes and declare the election of the person who may have the greatest number of votes; and shall certify to the governor, the election of such person, unless such election shall be contested in the manner hereinafter provided; and upon such certificate being produced, the governor shall immediately commission such person, he

(n)—1809, Sess. Acts, p. 33. (a)—1791, 1st Faust, p. 22.

## SHERIFFS.

having first complied with all the requisitions attached to the office of sheriff.—(b.)

II. If any person shall be disposed to contest the election of any other person so elected sheriff, he shall, on the day, on which the votes are counted over, and the election declared, signify such his intention in writing, to the managers, and the grounds on which he intends to contest the same; and the said managers shall thereupon have power to hear and determine such contest, upon the grounds so to them stated: Provided, that no manager shall be permitted to sit upon the hearing and determining of any contested election, wherein he may have been a candidate for the office of sheriff; and in case such election shall not be declared void, the said managers shall certify to the governor, the person who is elected, who shall be commissioned in manner aforesaid.—(b.)

III. It shall be the duty of the governor to fill up all vacancies in the office of sheriff, that shall take place by death, resignation, removal out of the state, removal from, or expiration of, office, of any person possessing the same, or by any election of sheriff being declared void by the managers, as aforesaid, or where any two or more candidates shall have an equal number of votes, to hold under such appointment, until such time as an election shall take place, according to the foregoing provisions.—(b.)

IV. All laws regulating the election of members to the general assembly, shall apply to the elections directed to be held for the office of sheriff.—(b.)

V. Every sheriff elected, as aforesaid, shall enter on the duties of his office on the second Monday in February next ensuing his election: but no sheriff shall be commissioned until he shall have given bond and security for the due and faithful discharge of the duties of his said office; and the commissions of the sheriffs, so elected, shall be for the term of four years, to be computed from the said second Monday in February, in the year in which such sheriff shall be so elected.—(b.)

VI. Every person elected to the office of sheriff, or appointed thereto by the governor, shall, within three weeks immediately succeeding such election, or appointment, enter into a bond, payable to the treasurers of the state, and their successors, in the sums hereinafter mentioned, conditioned for the due and faithful discharge of the duties of the said office: which bond shall be executed by the said sheriff, and any number of sureties not exceeding twenty, nor less than five; which sureties, before they are accepted, or received by the treasurers, shall be approved, in writing, by the commissioners appointed for that purpose: and no person elected or appointed to the office

of sheriff, shall be permitted by the judges to enter upon the execution of his office, until he hath recorded in the office of the clerk of the court of the district, for which he may be elected or appointed, a certificate from the said commissioners, (which certificate they are required to give,) that such sheriff hath duly executed, and lodged in the treasury, such bond, with the security required: and if any person so elected, or appointed, as aforesaid, shall fail to provide and perfect the security within the time by law required, the office of such sheriff shall be vacated.—(c.)

VII. The persons, who shall be approved of, and join as sureties in any sheriff's bond, shall be severally held and deemed liable, each one for his equal part of the whole sum, in which such bond is given, (the said sum to be divided into as many equal parts as there shall be sureties in the bond,) and no more than such equal part shall be recoverable from any one of the said sureties, his heirs, executors, or administrators: but nothing in this section contained, shall prevent such sureties from having and obtaining, amongst themselves, just and equitable aid and contribution, as in other cases of securityship.—(c.)

VIII. The aforesaid commissioners, or any three of them, respectively, shall have power to judge and determine on the sufficiency of the security to be offered by any sheriff; and shall have authority to administer an oath to each of the sureties, who may be offered, that he is worth, over and above all his debts, the sum for which he offers himself as surety: and in case any of the said commissioners shall depart this state, die, resign, or refuse to serve, the governor shall fill the vacancy occasioned thereby, until the next meeting of the legislature.—(d.)

IX. The bonds of the sheriffs of the several districts shall be given, respectively, in the sums following, to-wit: The bond of the sheriff of Charleston district, in the sum of thirty thousand dollars; the bonds of the sheriffs for the districts of Abbeville, Pendleton, Sumter, Fairfield, and Edgefield, respectively, in the sum of twenty thousand dollars; the bond of the sheriff of Georgetown district, in the sum of fifteen thousand dollars; the bonds of the sheriffs of the several districts of Colleton, Beaufort, and Kershaw, in the sum of twelve thousand dollars; and the bond of the sheriff of every other district, in the sum of seven thousand dollars.—(e.)

X. The said bonds shall be deposited in the treasury, and may, at all times, be sued for by the public, or any private person, who may think himself aggrieved by the misconduct of any sheriff; for which purpose, the treasurers for the time being,

(c)—1795, 2d Faust, pp. 8—9. (d)—Ibid. p. 11. (e)—1799, Ibid. p. 263.  
Sess. Acts of 1819, p. 28, and Sess. Acts, 1820, p. 9.

and each of them, shall, upon application at the treasury office, and payment of the fees for doing the same, deliver to the person applying therefor, an exact and certified copy of any sheriff's bond there deposited; which copy, so certified, shall be good and sufficient evidence, in all the courts of this state, in any suits so to be instituted: Provided nevertheless, that it shall not be lawful for any person, who may think himself aggrieved by any sheriff, to commence an action against the security required to be given, until a return of *nulla bona* shall have been made on some execution, to be issued against the said sheriff, either at the suit of the person aggrieved, or some other person: And provided further, that after a return of *nulla bona* against the sheriff, his surety, or sureties, shall not be entitled to an imparlance.—(h.)

XI. In every obligation to be taken from a sheriff, it shall be a part of the condition thereof, that such sheriff is not, at the time of giving the said bond, under any obligation, either in honor or law, to share the profits of the office with any other person whomsoever; and that he will not, directly, or indirectly, sell, or dispose of his office, or the profits thereof, but will either resign and settle all his accounts, or continue in the actual discharge of the duties thereof, by himself, or his deputy, or deputies, during the time, for which he is elected, if he shall so long live.—(m.)

XII. Any sheriff may qualify, and take the oaths prescribed by law, before any two justices of the quorum for the district, for which he shall have been elected, or appointed, and it shall be the duty of such justices of the quorum to administer such oaths.—(n.)

XIII. The sheriffs shall, either by themselves, or lawful deputies, give constant attendance at their respective offices, which shall be kept in the city, town, or village, where the several court houses shall be established, (o) on pain of forfeiture of office.—(p.)

XIV. The said sheriffs shall, by themselves, or their lawful deputies, attend all the courts of law and equity within their respective districts, and shall have the like powers and authorities, and they and their under sheriffs, or gaolers, shall be subject and liable to all actions, suits, fines, forfeitures, and penalties whatsoever, which any sheriffs, under sheriffs, or gaolers, are liable, or subject to, by the laws and statutes of Great-Britain.—(a.)

XV. It shall be the duty of all sheriffs to serve writs of sub-pœna delivered to them for service, and they shall be entitled

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(h)—1799, 2d Faust, p. 9. (m)—Ibid. p. 10. (n)—Ibid. p. 329. (o)—1791, 1st Faust, p. 22. (p)—Ibid. p. 165. (a)—1769, P. L., p. 271.

to receive the same fees therefor, as for the service of summary processes, and mileage for each ticket.—(b.)

XVI. A fair and true copy of the books of every sheriff shall be made at his own expense; in books well and strongly bound, and shall be lodged, within three months after the expiration of his office, and be kept as public records, in the respective offices of the several sheriffs for the time being, throughout this state, on pain of forfeiting two thousand one hundred and forty-three dollars.—(c.)

XVII. The sheriff of every district in this state, shall, before he exposes any lands or tenements, which he may be directed to sell by virtue of any execution, or mortgage, advertise the same three weeks immediately previous to the sale day, or sale days, at which he means to expose the same for sale; and every sheriff shall, before he exposes any personal property, which he may be directed to sell, publicly advertise the same fifteen days immediately previous to the sale day, or days, on which he means to expose the same to sale: and such advertisements shall be in one, or more, of the Gazettes, in cases where the lands, or other property, may be in districts, where Gazettes are printed; and where there are no Gazettes printed, the notices shall be put up at the court-house door, and two other public places in the district; one of which shall be in the neighborhood of the property so to be sold.—(d.)

XVIII. It shall be the duty of the several sheriffs, in all advertisements of property to be sold by them at sheriff's sales, to insert in their advertisements thereof, for the general information of the public, as well the names of the debtors, or persons, to whom the same belongs, as the names of the creditors, or persons, at whose suit or instance the same is intended to be sold; and every sheriff neglecting so to do shall be subject to a penalty of two hundred and fourteen dollars and thirty cents, and all damages, to be recovered by any person, who may be injured by such omission, by action in any court of law in this state.—(g.)

XIX. No sheriff shall be authorized to charge or receive more than one dollar for his advertisements for the first day's sale, nor more than fifty cents for advertising the same property at any subsequent sale day, except in Charleston, Richland, and Georgetown, districts, and in districts, the court-houses of which are not more than forty miles from printing-offices, in which cases the sheriff shall cause all property to be sold by them, to be advertised in the public Gazettes most contiguous, at least once a week, and be allowed to receive the cost of print-

(b)—1808, Sess. Acts, p. 50. (c)—1791, 1st Faust, p. 165. (d)—1799, 2d Faust, p. 147. (g)—1796, 2d Faust, p. 87.

ing such advertisements, but no other charge for advertising; and also advertise, as heretofore.—(h.)

XX. No person purchasing personal property at any sheriff's sale, shall be compelled to take a bill of sale for such property, nor to pay for any bill of sale, unless the purchaser demand it for the property purchased; and if the purchaser demand a bill of sale, the sheriff shall charge therefor not more than two dollars.—(h.)

XXI. In all cases, where any sheriff shall have legally sold any tract or tracts of land, and such sheriff shall be dead, resigned, or removed from office, before he shall have made and executed titles therefor to the purchaser, it shall be lawful for the successor in office of such sheriff, upon the terms of such sale being complied with, to make and execute good and sufficient titles to the purchaser for the lands so sold.—(m.)

XXII. No sheriff, no master in equity, nor commissioner of the loan office, or treasury, shall be concerned or interested, directly, or indirectly, in the purchase or acquisition of any property sold by them, respectively, by virtue of any process, execution, order of court, or law; and if any such officer shall presume to be concerned, or interested in any such purchase, or acquisition, at any sale by him made, he shall, on conviction thereof, be deprived of his office, and the purchase so made shall be utterly void, and of no effect.—(n.)

XXIII. The several sheriffs shall pay over to the plaintiffs, or their attorneys, respectively, all sums of money, which they may have received on account of such plaintiff, within ten days after they shall receive the same: and if any sheriff shall refuse to pay over the same within ten days, as aforesaid, if demanded, he shall be liable to forfeit and pay to the plaintiff entitled to the same, fifty per cent, on the sum so received, to be recovered by action of debt.—(o.)

XXIV. The sheriffs of the several districts, with whom executions for taxes shall be lodged by the collectors, shall, within ninety days after receiving such executions, make to the comptroller-general a full and complete return thereof: and in case any sheriff shall fail, or neglect, to make such return within the time prescribed, it shall be the duty of the comptroller-general to cause such defaulting sheriff to be debited in the books of the treasury, with the full amount of his receipt; and such sheriff shall not afterwards be entitled to a credit for any executions returned by him after the expiration of the said ninety days, al-

(h)—1808, Sess. Acts, p. 49 Except the sheriffs of Newberry, Laurens, Abbeville, Spartanburgh, Greenville, Fairfield, Kershaw, Lexington, Edgefield, Marlborough, Darlington, and Sumter, who are not bound to advertise in public papers—1812 Sess. Acts, p. 34, and ch. 1821, p. 9.

(m)—1813, 2d Faust, p. 496. (n)—1791, 1st Faust, p. 41. (o)—1796, 2d Faust, p. 87.

though such executions shall be returned *nulla bona*, or *non est inventus*.—(p.)

XXV. At all sheriffs' sales made in any district of this state, every purchaser shall, if the plaintiff directs the same, immediately after any article of property shall be knocked off to him, pay into the hands of the sheriff making the sale, a sum equal to at least ten per cent. on the amount of his purchase, towards the payment thereof; and if he shall fail, or neglect, to make such payment, the sheriff shall immediately set up the same property for public sale, upon the spot, and shall nots upon such release, or any sale of the same property, under the same execution, or upon the same account, afterwards to be made, receive the bid of the first purchaser, or his agent: Provided such plaintiff give notice, in writing, of his requiring the same, in time to enable the sheriff to insert such his intention in one, at least, of his public notices, of such sale.—(a.)

XXVI. If any purchaser, after paying the percentage aforesaid, shall fail to comply with the terms of the sale, all the money so paid shall be forfeited to the plaintiff in the execution, under which such sale was made, and shall, if the sale be made by any sheriff, or constable, be applied, first, to pay the costs and charges accrued, or due, upon the suit and sale, and the surplus towards paying the debt; and the sheriff, or constable, making the sale, shall not, at any re-sale of the same property, under the same execution, or upon the same account, receive, or take notice of any bid made by any such first, or former purchaser.—(b.)

XXVII. If, after the percentage aforesaid shall have been paid, any thing on the part of the seller, or his agent, shall prevent proper titles from being made for the property sold, within a reasonable time, or otherwise obstruct the completion of the sale, the said percentage shall be returned to the purchaser, and by him may be recovered by action on the case, together with interest, if such return should not be made, after being demanded; and the sheriff and his securities shall be liable for such percentage, and the interest thereon.—(b.)

XXVIII. If any person shall become a purchaser at any re-sale, made by any sheriff, or constable, on account of the first, or former, purchaser failing to pay the percentage aforesaid, or to comply with the terms and conditions of the sale, whether the same be made for cash, or credit, such person shall himself be bound by his purchase, and comply with the requisitions contained in the two sections immediately preceding, and the terms and conditions of such re-sale; and shall not be allowed to say that he bought the same, as agent for the first, or any former purchaser: Provided that it shall have been publicly proclaimed.

•(p)—1814, Sess. Acts, p. 11. (a)—1797, 2d Part, p. 85. (b)—*Ibid.* p. 86.

ed by the crier at such sale, that the same was to be made on account of the first, or former purchaser, and the conditions and terms of the sale shall, in like manner, have been proclaimed by him immediately before the property was set up.—(b.)

**XXIX.** The sheriff of each district shall be obliged, at the expiration of his office, to turn over to the succeeding sheriff, by indenture and schedule, all such writs and processes, as shall remain in his hands, unexecuted, who shall duly execute and return the same; and also all executions, where he hath not made actual sale of the property levied on by virtue of such executions; to the amount of the demands of the plaintiffs in such suits; and each sheriff shall also deliver to his successor, the custody of the gaol, and the bodies of such persons, as shall be confined therein, with the cause of their detention; and in case any sheriff shall refuse, or neglect, to turn over such process, in manner aforesaid, he shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as may be sustained in consequence of such neglect, or refusal.—(p.)

**XXX.** No sheriff shall be liable to be served with any rule to show cause, or attachment, at any time after two years from the expiration of his office.—(q.)

**XXXI.** Every sheriff and gaoler, to whom the custody of any gaol in this state shall be committed, shall receive into, and safely keep in, such his gaol, until delivered by due course of law, any person, who shall be committed thereto, by a warrant signed by any judge, or justice, of this state, or of the United States, under the penalty, for every refusal, of fine, or imprisonment, or of both, at the discretion of the court.—(c.)

**XXXII.** Every sheriff, or other person, having the keeping of any gaol, or prisoners, for felony, shall certify the names of all such prisoners to the judges, at the next court of sessions, to be holden for the district, on pain of forfeiting, for every neglect, the sum of twenty-one dollars and forty cents, to the use of the state.—(d.)

**XXXIII.** Every sheriff shall provide, at the expense of the state, a sufficient number of blankets for the use of the prisoners confined in the gaol of his district; and ever prisoner so confined on a criminal charge shall be furnished with at least two blankets during the winter season.—(g.)

**XXXIV.** For each prisoner confined and dieted in any gaol in this state, thirty-seven and a half cents per diem shall be allowed to the sheriff, who shall have charge thereof, in lieu of all other claims on the part of such sheriff, for such detention and dieting.—(h.)

(b)—1797, 2d Faust, p. 86. (p)—1792, 1st Faust, p. 40—see also P. L. p. 271. (q)—1801, 2d Faust, p. 429. (c)—1790, P. L. p. 304 and 2d Faust, p. 343. U. States to pay 50 cents a month for each prisoner, and support such as may be committed for offenses under their authority. (d)—1712, P. L. p. 42. (g)—1800, 2d Faust, p. 343. (h)—1805, *Seas. Acts*, p. 39.

SHERIFFS.

570

**XXXV.** For each negro confined and dieted in any gaol, twenty-five cents per day shall be allowed to the sheriff, who shall have charge thereof, in lieu of all other claims, on the part of the said sheriff, for such detention and dieting.—(m.)

**XXXVI.** It shall be the duty of the sheriffs of the several districts of this state, to advertise in the Carolina Gazette, in Charleston, all such negroes, as are in their custody, once in every week for three months; and on failure thereof, they shall, respectively, forfeit such compensation for detention and dieting, as they would otherwise have been entitled to receive.—(m.)

**XXXVII.** If any sheriff shall hire out, or permit any negro, who may be in his custody, to go or be without the walls of the gaol of the district, of which he is sheriff, he shall, for every such offence, on conviction thereof, be fined a sum not less than one hundred dollars, nor more than two hundred dollars.—(n.)

**XXXVIII.** It shall not be lawful for the sheriff, or keeper of any gaol, or prison, to put, keep, or lodge, persons for debt and felonies in one room, or chamber, upon pain that whosoever shall offend herein, shall forfeit and loose his office, place, or employment, and forfeit triple damages to the party aggrieved.—(a.)

**XXXIX.** No sheriff, or sheriff's officer, shall be an attorney, or act as such in his own name, or in the name of any other person.—(b.)

**XL.** No person exercising the office of sheriff, shall exercise the office of a justice of the peace; and all acts done by such sheriff, by virtue of such commission of the peace, shall be void and of no effect.—(c.)

**XLI.** No sheriff, or other officer, shall, at any time, in collecting taxes, levies, or officers' fees, make any unreasonable seizures, or distress, or distrain, any slave, if other sufficient distress can be found, upon penalty of being liable to the party aggrieved for his damages.—(d.)

**XLII.** The several sheriffs throughout this state shall have the custody of the gaols in their respective districts; and shall be accountable for the conduct of their gaolers, or persons whom they may appoint to keep the same.—(g.)

**XLIII.** If any person desiring to charge any other person with any action, or exception, shall desire to be informed by the sheriff, or his deputies, or other keeper of any prison in this state, whether such person be a prisoner in his custody, or not, the said sheriff, or gaoler, shall give a true note, in writing, thereof, to the person so requesting the same, or to his lawful attorney, upon demand, at his office, for that purpose made; and

(m)—1810, Sess. Acts, p. 29. (n)—Ibid. (a)—1712, P. L. p. 82. (b)—1769, Ibid. p. 271. (c)—1712, P. L. Appx p. 11. (d)—1785, P. L. p. 376. (g)—1712, P. L. Appx. p. 4.

in default thereof, shall forfeit the sum of two hundred and fourteen dollars and thirty cents: And if any sheriff, or gaoler, shall give a note, in writing, that such person is an actual prisoner, in his, or their, custody, such note shall be accepted and taken as sufficient evidence, that such person was, at that time, a prisoner in actual custody.—(w.)

**XLIV.** Where any person, or persons, shall hereafter be apprehended, or in confinement, according to law, in any district in this state, wherein the gaol is destroyed by fire, or other accident, he, she, or they, shall be committed to the gaol nearest the one destroyed; for safe keeping; and the several gaolers in this state, who are the keepers of the gaols nearest to those gaols that may be destroyed, as aforesaid, shall receive and safely keep such person, or persons, apprehended, or in confinement, as aforesaid, in those districts, in which the gaols may be destroyed, as aforesaid, and shall receive such fee, or fees, for the safe keeping of such person, or persons, as by law is provided; Provided nevertheless, that all persons, who are apprehended, or in confinement, on mesne, or final process, and admitted to gaol bounds, and have given good and sufficient security for the keeping of the said bounds, according to law, shall be continued in the district, in which they may, respectively, be apprehended, or in confinement, and within the bounds now established by law, for the several gaols in this state.—(x.)

**XLV.** It shall be the duty of the several sheriffs in this state, who do not live in the gaol, to employ a proper and discreet person as gaoler, who shall live within the same, and be prohibited from using the house for any other purpose, than that, for which it was designed by law.—(y.)

A sheriff has no right to question the regularity of an execution lodged with him, and cannot be made answerable for enforcing an irregular execution.—*Treasurer vs Ford*, 1 *Nott & McCord*, 236. If a sheriff seize and sell the goods of one man, to satisfy an execution against the property of another, he is a trespasser—*Mitchell vs. Dubose*, 1 *Mill*, 360.

**All negroes, Indians, (free Indians, in amity with this government, and negroes, mulattoes, and mustizoes, now free, excepted,) mulattoes, or mustizoes, who now are, or shall hereafter be, in this state; and all their issue and offspring, born, or to be born, shall be, and remain for ever hereafter absolute**

(w)—4712, P. L. Appx. p. 16. (x)—1812, Sess. Acts p. 19. (y)—Ibid. p. 20.

slaves, and shall follow the condition of the mother; and shall be deemed and adjudged, in law, to be chattels personal in the hands of their owners, and their executors, administrators, and assigns, to all intents, constructions, and purposes whatsoever.—(a.)

II. No person shall permit, or suffer, any slave, under his, or her, care, or management, who lives and is employed in Charleston, or any other town in this state, to go out of the limits of the said town, or any slave, who lives in the country, to go out of the plantation to which such slave belongs, or on which such slave is usually employed, without a letter, subscribed and directed, or a ticket to the following purport: Permit this slave to be absent from (name of town, or plantation) for      days (or hours); dated the      day of      &c. which ticket shall be signed by the master, or other person, having the charge of such slave, or by some other person, with his, or her, order and consent; and every slave who shall be found out of Charleston, or any other town, where such slave lives, or is usually employed, or out of the plantation, to which such slave belongs, or in which such slave is usually employed, if such slave lives in the country, without a letter, or ticket, as aforesaid, or without some white person in company, shall be punished with whipping on the bare back not exceeding twenty lashes.—(a.)

III. If any person shall presume to give a ticket, or license, to any slave, who is the property, or under the charge of another, without the consent, or against the will of the owner, or other person, having charge of such slave, the person so offending shall forfeit to the owner the sum of twelve dollars.—(a.)

IV. If any slave, who shall be out of the house, or plantation, where such slave shall live, or be usually employed, or without some white person in company, shall refuse to submit to, or undergo the examination of any white person, it shall be lawful for any such white person to pursue, apprehend, and moderately correct, such slave; and if any such slave shall assault and strike such white person, such slave may be lawfully killed: Provided, that if any slave, who shall be employed in the lawful business, or service, of his master, or other person, having charge of such slave, shall be beaten, bruised, maimed, or disabled, by any person, or persons, not having sufficient cause, or lawful authority for so doing, every person so offending, shall, for every such offence, forfeit and pay the sum of one dollar and twenty cents, over and besides the damages hereinafter mentioned, to the use of the poor of the parish, or district, where such offence shall be committed; and if such slave shall be maimed, or disabled, by such beating, from performing his, or her,

(a)—1740, P. L. p. 164.

work, such offender shall also forfeit and pay to the owner of such slave, the sum of forty-five cents per day, for every day of lost time, and also the charge of the cure of such slave.—(c.)

V. It shall be lawful for every justice of the peace in this state, within their respective jurisdictions, upon his own knowledge, or view, or upon information received, upon oath, either to go in person, or by warrant, or warrants, directed to any constable, or other proper person, to command to their assistance, any number of persons, which they may deem necessary, to disperse any assembly, or meeting of slaves, which may disturb the peace, or endanger the safety of the good people of this state, and to search all suspected places for arms, ammunition, or stolen goods; and to apprehend and secure all such slaves, as they shall suspect to be guilty of any crimes, or offences, whatsoever, and to bring them to speedy trial; and in case any constable, or other person, shall refuse to obey, or execute any of the warrants, or precepts, of such justices, or any of them, within their several limits, or precincts, or shall refuse to assist the said justices, or constables, or any of them, when commanded, or required, such person shall forfeit and pay the sum of three dollars, to be recovered by a warrant under the hand and seal of any other justice of the peace, in the manner directed for the trial of small and mean causes; and if any person shall be maimed, wounded, or disabled, in pursuing, apprehending, or taking any slave that is run-away, or charged with any criminal offence, or in doing any other matter, or thing, in pursuance of this act, he shall receive such reward from the public, as the general assembly shall think fit; and if any person shall be killed, his heirs, executors, or administrators, shall receive the like reward.—(c.)

VI. All assemblies and congregations of slaves, free negroes, mulattoes, and mustizoes, whether composed of all of the above description of persons, or of any of the above described persons, and a proportion of white persons, assembled, or met together, for the purpose of mental instruction, in a confined, or secret place of meeting, or with the gates, or doors of such place of meeting, barred, bolted, or locked, so as to prevent the free ingress and egress to and from the same, is hereby declared to be an unlawful meeting; and the magistrates, sheriffs, militia officers, and the officers of patrol, being commissioned, shall enter into such confined places, where such unlawful assemblies are convened; and for that purpose it shall be lawful for them to break doors, gates, or windows, if resisted, and disperse such slaves, free negroes, mulattoes, or mustizoes, as may be then and there found unlawfully convened; and such magistrates, sheriffs, militia officers, constables, or officers of the patrol,

shall call to their assistance such force from the neighborhood; as they, or either of them, may judge necessary for the dispersing of such unlawful assemblage of persons of color, as aforesaid: and the officers and persons so dispersing such unlawful assembly, shall, if they think proper, impose such corporal punishment, not exceeding twenty lashes, upon such slaves, free negroes, mestizoes, or mulattoes, as they may judge necessary for deterring them from the like unlawful assembling for the future: and the said officers, so dispersing such unlawful assemblage, shall, if within the city of Charleston, have power to take into custody, and deliver, to the master of the work house, all, or any, of such slaves, free negroes, mestizoes, or mulattoes, as may be found transgressing this law; and the said master of the work-house shall receive such persons, and inflict on them such punishment, as any two magistrates of the city may direct, not exceeding twenty lashes, as aforesaid: and the officers dispersing such unlawful assemblies, shall, if without the city of Charleston, have power to take into custody, and deliver to the nearest constable, all, or any, of such persons of color, as shall be found transgressing herein; and such constable shall receive such persons, and convey them to the nearest magistrate, who shall inflict such punishment, not exceeding twenty lashes, as such magistrate may order and direct.—(g.)

VII. It shall not be lawful for any number of slaves, free negroes, mestizoes, or mulattoes, even in company with white persons, to meet together and assemble for the purpose of mental instruction, or religious worship, either before the rising of the sun, or after the going down thereof: and all magistrates, sheriffs, militia officers, and officers of patrol, being commissioned, city, or town guard, or watchmen, shall have authority to disperse such assemblies before day, or after sun set, as above directed: and the said officers shall be authorized to inflict on all such slaves, free negroes, mulattoes, or mestizoes, the same punishment, as by the patrol law they are authorized to do in any case whatsoever.—(h.)

VIII. Every officer and other person so entering, and dispersing such slaves, free negroes, mestizoes, or mulattoes, from such closed and confined places of meeting, before sunrise, or after sunset, shall be free from all suits at law, prosecutions, and indictments, for, or on account of, such acts as may be done and performed in pursuance of the meaning of this act: and every person suing, or prosecuting any officer, or other person, for any trespass, or tort, done by him in putting in force and executing this law, on failure of convicting the party, or proving the case fully, so as to entitle him to a recovery of damages, shall be liable, and be adjudged to pay to the party so sued, or

(g)—1800, 2d Paus., p. 351. (h)—Ibid. p. 353.

prosecuted, triple costs; for which costs, the party shall have his execution in the usual form, against the goods and chattels of such prosecutor, or informer, or plaintiff in the cause, upon application to the clerk of the court where the cause is tried.—(h.)

IX. It shall not be lawful for any person, or persons, at any time before nine o'clock in the evening of any day, to break into any place of meeting, wherein shall be assembled the members of any religious society in this state, provided a majority of them shall be white persons; or otherwise to disturb their devotion, unless the persons so entering the said place, shall have first obtained from some magistrate appointed to keep the peace, a warrant authorizing him or them so to do, in case a magistrate shall be then actually within the distance of three miles from such place of meeting.—(m.)

X. It shall not be lawful for any slave, unless in the presence of some white person, to carry, or make use of, fire arms, or any offensive weapon whatsoever, unless such slave shall have a ticket or license in writing, from his master, mistress, or overseer; to hunt and kill game, cattle, or mischievous birds, or beasts of prey, and such license be renewed once in every month, or unless there be some white person of the age of sixteen years, or upwards, in the company of such slave, when he is hunting, or shooting; or such slave be actually carrying his master's arms to, or from, his master's plantation, by a special ticket for that purpose; or unless such slave be found in the day time, actually keeping off rice birds, or other birds, within the plantation, to which he belongs, lodging the said gun at night, within the dwelling-house of his master, mistress, or white overseer. And no slave shall have liberty to carry any gun, cutlass, pistol, or other weapon, abroad from home, at any time between Saturday evening, after sunset, and Monday morning, before sunrise, notwithstanding a ticket, or license, for so doing; and in case any person find any slave using, or carrying fire arms, or other offensive weapons, contrary to the true intention of this act, such person may lawfully seize and take away such fire arms, or offensive weapons; but before the property of such goods shall be vested in the person who shall seize the same, such person shall, within forty-eight hours after such seizure, go before the next justice of the peace, and make oath of the manner of the taking; and if such justice of the peace, after such oath made, or upon any other examination, shall be satisfied that the said fire arms, or other offensive weapons, have been seized according to the directions, and true intent and meaning of this act, he shall, by certificate under his hand and seal, declare them forfeited, and that the property is lawfully vested in the person who seized the same: Provided that no

(h)—1800, 2d Faust, p. 353. (m)—1803, 2d Faust, p. 506.

such certificate shall be granted by any justice of the peace, until the owner or owners of such fire arms, or other offensive weapons, so seized as aforesaid, or the overseer, or overseers, who may have the charge of such slave, or slaves, from whom such fire arms, or other offensive weapons, may have been taken or seized; shall be duly summoned to shew cause, if any they have, why the same should not be condemned as forfeited; or until forty-eight hours after the service of such summons, and hath made thereof, before the said justice.—(a.)

XI. No owner, master, or mistress, of any slave, shall permit such slave to go and work out of his, or her, house, or family, without a ticket in writing, under pain of forfeiting the sum of six dollars for every such offence, to be paid, the one half to the commissioners of the poor, for the use of the poor of the district, wherein such offence is committed, and the other half to the person who will inform and sue for the same, to be recovered by warrant under the hand and seal of any justice of the peace of the said district; and every person employing a slave, without a ticket from the owner of such slave, shall forfeit to the informer three dollars for each day he, or she, so employs such slave, over and above the wages agreed to be paid such slave for his, or her, work: Provided the said penalty of three dollars per day shall not extend to any person, whose property is disputable; and that nothing herein contained shall bind any person from hiring out, by the year, or any other time, any slaves, to be under the care and direction of the owner, or employer, and the whole of their earnings to be paid to the owner, and that the employer have a certificate, or note in writing, of the time or times of such slave's employment, from the owner, attorney, or overseer, of every such slave, respectively.—(b.)

XII. It shall not be lawful for any slave to buy, sell, trade, traffic, deal, or barter, for any goods, or commodities, without a license from the owner, or other person having the government of such slave; in which license, the quantity and quality of such goods, or commodities, shall be distinctly set down and specified, and signed by such owner, or other person having the government of such slave, as aforesaid; nor shall any slave, be permitted to keep any boat, periauger, or canoe, or raise and breed, for the benefit of such slave, any horses, mares, cattle, sheep, or hogs, under pain of forfeiting all the goods and commodities, which shall be so bought, sold, traded, trafficked, dealt, or bartered for, and all the boats, periaugers, or canoes, horses, mares, neat cattle, sheep, or hogs: And it shall be lawful for any person whatsoever, to seize and take away from any slave, all such goods, commodities, boats, periaugers, canoes, horses, mares, neat cattle, sheep, and hogs, and to deliver the

(a)—1740, P. L. p. 168. (b)—Ibid. p. 171—see also 1st Faust, p. 79.

same into the hands of any justice of the peace nearest to the place where the seizure shall be made; and such justice shall take the oath of the person making such seizure, concerning the manner thereof; and if the said justice shall be satisfied that such seizure hath been made according to law, he shall pronounce and declare the goods so seized, to be forfeited; and order the same to be sold at public outcry, (one half of the monies arising from such sale to go to the state, and the other half to him, or them, that will sue for the same (o): Provided that if any goods shall be seized, which came to the possession of any slave by theft, finding, or otherwise, without the knowledge, privity, or consent, of the owner, or other person, who may have a right to the property, or lawful custody of any such goods, all such goods shall be restored, on such person's making oath before any justice, to the following effect, to-wit—  
“I do sincerely swear, that I have a lawful right, or title, to certain goods seized and taken by \_\_\_\_\_ out of the possession of a slave named \_\_\_\_\_, and that I did not, directly, or indirectly, permit the said slave, or any other slave whatsoever, to use, keep, or employ, the said goods, for the benefit, or profit of any slave whatsoever, or to sell, barter, or give away, the same; but that the said goods were in the possession of the said slave by theft, finding, or otherwise, or to be kept bona fide for my use, or for the use of \_\_\_\_\_ a free person, and not for the use, or benefit of any slave whatsoever: So help me God.”—(c.)

XIII. If any person shall, at any time hereafter, by himself, or another, directly, or indirectly, buy, or purchase, from any slave, in any part of this state, any corn, rice, peas, or other grain, bacon, flour, tobacco, indigo, blades, or any other article whatever, or shall otherwise deal, trade, or traffic, with any slave not having a ticket, or permit, so to deal, trade, or traffic, from and under the hand of his, or her, master, or owner, or such other person as may have the management of such slave, such offender shall forfeit, for every offence, a sum not exceeding one thousand dollars, to be recovered by bill, plaint, or indictment, in any court having jurisdiction; one half to the use of the state, and the other half to the informer; (d.) and imprisonment not exceeding twelve months, nor less than one month, at the discretion of the court.—(e.)

XIV. No slave shall be permitted to hire, or rent any house, room, store, or plantation, on his, or her, own account, or to be used, or occupied by any slave; and any person, who shall let, or hire, any house, room, store, or plantation, to any slave, or to any free person, to be occupied by any slave, shall forfeit and pay to the informer the sum of twelve dollars, to be recov-

(o)—1740, P. L. p. 175. (c)—Ibid. p. 171. (d)—1796, 2d Faust, p. 91.

(e)—1817, Sess. Acts, p. 25.

vered by warrant, before any justice of the peace for the district where the offence shall be committed.—(g.)

XV. No men slaves, exceeding seven in number, shall be permitted to travel together in any high road in this state, without some white person with them; and it shall be lawful for any person, or persons, who shall see any men slaves, exceeding seven in number, without some white person with them, as aforesaid, travelling, or assembled together, in any high way, to apprehend all such slaves, and whip them, not exceeding twenty lashes, on the bare back.—(g.)

XVI. If any person whosoever, shall teach, or cause to be taught, any slave whatsoever, to write, or shall use, or employ, any slave as a scribe in any manner of writing, every such person shall, for every such offence, forfeit the sum of sixty dollars.—(g.)

XVII. If any slave shall be detected in fire hunting, or shall kill, in the night time, any deer, horse, or neat cattle, or stock of any kind, not the property of his master, or owner, such slave shall, on conviction thereof, before any justice and four freeholders of the district where the offence is committed, receive such corporal punishment, not extending to life, or limb, not exceeding thirty-nine lashes, as the said justice and freeholders shall direct; or in case it shall appear upon evidence to the satisfaction of the court, that the said offence was committed with the privity, or consent of the owner, or overseer, of such slave, such owner, or overseer, shall forfeit and pay a sum not exceeding eight dollars and fifty-five cents; and for every deer so killed, a sum not exceeding twenty-one dollars and forty cents, and for every horse, or head of neat cattle, or other stock of any kind, a sum not exceeding forty-two dollars and eighty-five cents, to be recovered before any justice of the peace and four disinterested freeholders of the parish, or district, where the offence is committed; one half to the use of the said district, and the other to the informer, who shall sue for, and recover, the same; and in case any person so convicted, as aforesaid, shall refuse, or neglect, to pay such fine, it shall be lawful for the justice, before whom he shall be convicted, and it shall be his duty, to commit such person to the common gaol of the said district, for a term not exceeding three months.—(h.)

XVIII. If any slave shall put fire to, or burn, any grass, brush, or other combustible matter, so that thereby the wood, fields, marshes, or lands, be set on fire, or cause the same to be done, or be thereunto aiding, or assisting, without the consent, direction, or knowledge of his, or her, master, or mistress, every such offender, unless the master, or mistress, will pay the damage, which the owner of the lands shall sustain, and costs

(g)—1740, P. L. p. 174. (h)—1789, Ibid. p. 497.

of suit, shall receive not exceeding thirty-nine lashes; at the discretion of the justice and freeholders, before whom the offender shall be convicted.—(m.)

XIX. If any slave shall brand, or mark, any horse, mare, gelding, colt, filly, ass, mule, bull, cow, steer, ox, calf, sheep, goat, or hog, except in the presence, and by the direction of some white person, he, or she, shall be whipped not exceeding fifty lashes, by order of any justice, or justices, of the peace of the district, before whom such offence shall be proved.—(n.)

XX. It shall be lawful for all persons whomsoever, to apprehend any negro, or other slave, who shall be found out of the plantation of his, or her, master, or owner, at any time, not being on lawful business, and with a letter, or ticket, from their master, or not having a white person with them, and the said slaves correct by a moderate whipping; and also any slave found abroad, as aforesaid, though with a letter, or ticket, if he, or she, be armed with any offensive weapon, to disarm, take up, and whip; and if any master, or overseer, shall suffer his slave, or slaves, at any time, to beat drums, blow horns, or use any other loud instruments, or shall suffer, or countenance any public meeting, or feasting, of strange negroes, or slaves, on his plantation, he shall, upon conviction, forfeit six dollars for every such offence: Provided a suit be commenced, within one month after forfeiture thereof, for the same.—(a.)

XXI. No owner of any slaves, (except liverymen and boys,) shall suffer such slaves to have, or wear, any sort of apparel whatsoever, finer, or of greater value, than negro cloth, duffils, kerseys, oznaburgs, blue linen, check linen, or coarse garlix, or calicoes, checked cottons, or Scots plaids, under the pain of forfeiting all and every such apparel and garment; and it shall be the duty of all constables and other persons, to seize and take away, to their own use and benefit, all and every such prohibited apparel and garment, as often as they shall be found on, or in the possession of, any slave: Provided, that if the owner of any such slave shall think the garment, or apparel, of his said slave, not liable to forfeiture, he may apply to any neighboring justice of the peace, who shall determine any dispute that may happen thereupon, according to the true intent and meaning of this act.—(b.)

XXII. If any owner of slaves, or other person, having the management thereof, shall work, or put any such slaves to labor more than fifteen hours in twenty-four hours, from the twenty-fifth day of March, to the twenty-fifth day of September, or more than fourteen hours in twenty-four hours, from the twenty-fifth day of September, to the twenty-fifth day of March,

(m)—1789, P. L. p. 493. (n)—Ibid. p. 496. (a)—1740, Ibid. p. 172.

(b)—Ibid. p. 173.

such owner, or other person, shall forfeit a sum not exceeding twelve dollars, nor under three dollars, for every such offence, at the discretion of the justice before whom the complaint shall be made.—(c.)

XXIII. If any owner, or other person, having the care, or government, of any slave, or slaves, shall deny, neglect, or refuse, to allow such slave, or slaves, sufficient clothing, covering, or food, it shall be lawful for any person, in behalf of such slaves, to make complaint to the nearest justice in the district, where such slaves live, or are usually employed; and the said justice shall summon the party, against whom such complaint is made, and shall enquire of, hear, and determine, the same; and if the said justice shall find such complaint to be true, and such party will not exculpate himself, or herself, from the charge, by his, or her, oath, which such party shall be at liberty to do, whenever positive proof is not given of the offence, such justice shall make such order upon the same, for the relief of such slave, or slaves, as he shall think fit, and shall impose a fine upon the person so offending, not exceeding twelve dollars for each offence, to be levied by warrant of distress, and sale of the offender's goods, returning the overplus, if any; which fine, or penalty, shall be paid to the commissioners of the poor of the district, or parish, where the offence shall be committed.—(d.)

XXIV. If any keeper of a tavern, or punch house, or retailer of strong liquors, shall give, sell, utter, or deliver, to any slave, any beer, ale, cider, wine, rum, or other spirituous, or strong liquor whatsoever, without the license, or consent of the owner, or other person, having the care, or government, of such slave, such offender shall forfeit the sum of three dollars for the first offence, and for the second offence, six dollars; and shall be bound in a recognizance, in the sum of sixty dollars, with one, or more, sufficient sureties, before any of the justices of the court of sessions, not to offend in the like kind, and to be of good behaviour for one year; and, for want of such sufficient sureties, shall be committed to prison, without bail, or main-prize, for any term not exceeding three months.—(g.)

XXV. If any free negro, mulatto, mustizo, or slave, shall harbor, conceal, or entertain, any slave that shall be run-away, or be charged, or accused, of any criminal matter, every such offender, being duly convicted thereof, if a slave, shall suffer such corporal punishment, not extending to life or limb, as the justice, or justices, who shall try such offender, shall think fit; and, if a free negro, mulatto, or mustizo, shall forfeit the sum of six dollars for the first day, and sixty cents for every day after, to the use of the owner of such slave so harbored, concealed, or entertained, as aforesaid, to be recovered by warrant under the

(c)—1740, P. L. p. 174. (d)—Ibid. p. 173. (g)—Ibid. p. 171.

hand and seal of any justice of the peace for the district where the offence shall be committed; and in case such forfeitures cannot be levied, or such free negro, mulatto, or mustizo, shall not pay the same, together with the charges attending the prosecution, such free negro, mulatto, or mustizo, shall be ordered, by the said justices, to be sold at public outcry; and the money arising from such sale, shall, in the first place, be paid and applied towards the forfeiture due and made payable to the owner of such runaway; and the charges attending the prosecution and sale; and the overplus, if any, shall be paid into the public treasury: (h) And if any white person, shall harbor, conceal, or entertain any runaway, or fugitive slave, such person shall be liable to be indicted for a misdemeanor, or prosecuted in a civil action for damages, at the election of the owner, or persons injured; and, in case any person being indicted, shall be convicted of said offence, such person shall be fined and imprisoned, at the discretion of the court, not exceeding one thousand dollars fine, nor one year's imprisonment: And, if any free negro, mulatto, or mustizo, shall harbor, conceal, or entertain, any fugitive, or runaway slave, and be convicted thereof, before two justices and five freeholders, he shall suffer such corporal punishment, not extending to life, or limb, as the said justices and freeholders, who try such offender, shall, in their discretion, think fit.—(c.)

XXVI. Every person taking up, or having in custody, any run-away slave, or slaves, shall cause the same to be conveyed, and delivered to the gaoler of any district, in which such slave shall be apprehended, within five days after taking such slave into custody, under the penalty of four dollars and twenty-eight cents for each day he shall neglect to carry such slave to such gaoler, to be recovered by the owner before a magistrate, or any court of record, as the case shall require; and the said gaoler shall, on receiving such slave, or slaves, confine, and be answerable for the same, and give a receipt therefor; and also give his note of hand to the person so delivering, for the amount of the party's trouble and expenses, allowing seven cents per mile, and fifty cents per day, allowing twenty-five miles per day, going only, and the sum of two dollars and fourteen cents, for taking up every such slave, if a runaway; which note shall be made payable to the bearer, and reimbursement to the gaoler immediately, out of the amount of sales of every such slave, or when his owner shall take him out of gaol, which shall not be before such owner shall have paid such and other lawful charges for confining and maintaining such slave: Provided that where any person shall take up a slave, he shall cause him to be conveyed to a neighboring justice, who shall examine the pa-

(b)—1740, P. L. p. 170. (c)—1821, Sess. Acts, p. 20..

ly, on oath, touching the distance and time he hath necessarily travelled, (and he shall go with such slave the nearest way to the district gaol,) and thereof give a certificate on a just estimate of such time and distance; without which certificate the gaoler shall not be obliged to give his note, but he shall, notwithstanding, take every slave into confinement; and in all cases, where such slave shall be delivered to any gaoler, he shall safely keep, and immediately advertise, in the state gazette, the name, age, and other particular description of such slave, in order that the owner may have notice of such slave's being in his custody; and in case no owner shall appear and prove property in such slave, (which proof shall be made, on oath, before one of the justices of the court of common pleas, or any justice of the quorum,) within twelve months from the day of publishing such notice, as aforesaid, then the gaoler shall sell such slave at public outcry, first giving one month's notice thereof in the said gazette, of the time and place of such sale; and thereupon the said gaoler shall give a bill of sale of such slave to the purchaser thereof; which bill of sale shall vest the property so sold in such purchaser, absolutely, and for ever; and after payment and satisfaction of all costs, charges, and expenses, attending any slave, or slaves, so sold, the overplus of money arising therefrom (if any) shall be paid into the public treasury of this state. And for every day the said gaoler shall wilfully neglect to advertise such slave, or slaves, after having them in his custody, agreeably to the directions of this act, he shall forfeit two dollars and ten cents for each slave, to be recovered by the owner, before a magistrate, or in any court of record, as the case may require.—(m.)

XXVII. If the owner, or owners, of such runaway slave, or slaves, shall make oath, and prove his, her, or their, property, to the satisfaction of any one of the judges of this state, or of any justice of the quorum, such owner, or owners, upon obtaining and producing a certificate of such proof, under the hand of such judge, or justice, (which they are required to give,) shall be entitled to take possession of such property, on payment of all lawful charges.—(n.)

XXVIII. If the owner of any property, sold by virtue of this act, shall make out and prove his, or her, property, to the satisfaction of any one of the judges of this state, such owner, upon obtaining and producing a certificate of such proof, under the hand of such judge, (which it shall be his duty to give) to the commissioners of the treasury, they shall pay to such owner, or owners, the sum lodged in the treasury for the property so sold: Provided such claim be made within two years after the sale of such property.—(n.)

(m)—1783, P. L. p. 441 and §33. (n)—1784, ibid. p. 333.

**XXIX.** If any slave shall suffer in life, limb, or member, &c. shall be maimed, beaten, or abused, contrary to the meaning of this act, when no white person shall be present, or being present, shall neglect, or refuse, to give evidence, or to be examined upon oath, concerning the same, in such case, the owner, or other person, having the possession, or government, of such slave, shall be deemed and adjudged to be guilty of such offence, and be proceeded against accordingly, without further proof, unless such owner, or other person, shall make the contrary appear by good and sufficient evidence, or shall, on oath, clear and exculpate himself; which oath, every court, where such offence shall be tried, shall have power to administer, and to acquit the offender accordingly, if clear proof of the offence be not made by two witnesses at least.—(b.)

**XXX.** If any person shall wilfully, maliciously, and deliberately, murder any slave within this state, such person, on conviction, shall suffer death, without the benefit of clergy. And if any person shall kill any slave, on sudden heat and passion, such person, on conviction, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding six months.—(c.)

**XXXI.** If any slave shall presume to strike a white person, such slave, upon conviction before the justice, or justices, and freeholders, as hereinafter directed, shall, for the first and second offence, suffer such punishment as they shall in their discretion think fit, not extending to life, or limb; and for the third offence, shall suffer death; but in case any slave shall grievously wound, maim, or bruise, any white person, though it shall be only the first offence, such slave shall suffer death:—Provided that such striking, wounding, maiming, or bruising, be not done by the command, and in the defence of the person, or property of the owner, or other person having the care, or government, of such slave; in which case, the slave shall be wholly excused, and the owner, or other person, as aforesaid, shall be answerable, as far as by law he ought.—(d.)

**XXXII.** All crimes and offences committed by slaves in this state, for which capital punishment may lawfully be inflicted, shall be heard, examined, tried, and adjudged, and finally determined, by any two justices of the peace, and any number of freeholders, not less than three, nor more than five, in the district where the offence shall be committed, and at a place, where they can be most conveniently assembled; either of which justices, on complaint made, or information received, of any such offence committed by a slave, shall commit the offender to the safe custody of some constable of the district, and shall,

(b)—1740, P. L. p. 172. (b)—Ibid. p. 172. (c)—1821, Sess. Acts, p. 12.

(d)—1740, P. L. p. 169.

without delay, by warrant under his hand and seal, call to his assistance, and request any one of the nearest justices of the peace to associate with him; and shall, by the same warrant, summon the number of freeholders aforesaid from the neighborhood, to assemble and meet together with the said justices, at a certain day and place, not exceeding six (o) days after the apprehending of such slave, or slaves; and it shall be left to the said justices and freeholders, at any time within six days after the apprehending of such slave, and his being committed by a justice of the peace for trial, to postpone the said trial to such further time, as they shall think proper, and appoint, upon oath being made before them, or affidavit produced, that the person, or persons, who were witnesses to the fact, for which such slave was apprehended, are ill, and cannot, with safety, attend such trial, or are at too great a distance to be there, within the time appointed for such trial (o): And the justices and freeholders, being so assembled, shall cause the slave accused, or charged, to be brought before them, and shall hear the accusation, that shall be brought against such slave, or slaves, and his, her, or their, defence, and shall proceed, to the examination of witnesses and other evidence, and finally hear and determine the matter brought before them, in the most summary and expeditious manner; and in case the accused shall be convicted of any crime, for which, by law, the punishment would be death, the said justices shall give judgment, and award and cause execution of their sentence to be done, by inflicting such manner of death, as the said justices, with the consent of the said freeholders, shall direct, and which they shall judge will be most effectual to deter others from offending in the like manner. And if any crime, or offence, not capital, shall be committed by any slave, such slave shall be proceeded against and tried for such offence by any one justice of the peace, and two freeholders of the district, where the offence shall be committed, and they can be most conveniently assembled; and the said justice and freeholders shall be summoned and called together, and shall proceed upon the trial of any slave, who shall be charged with committing an offence not capital, in like manner as in cases capital: And in case any slave shall be convicted before them of any offence, not capital, the said justice, with the consent of the said freeholders, shall give judgment for the inflicting of any corporal punishment not extending to life, or member, as he, and they, shall think fit; and shall cause execution to be done accordingly: Provided that if the said justice, and freeholders, upon the examination of any slave, charged before them of an offence not capital, shall find the same to be a greater offence, which may deserve death, they shall, with all

(o)--1754, P. L. p. 236.

**XXIX.** If any slave shall suffer in life, limb, or member, it shall be maimed, beaten, or abused, contrary to the meaning of this act, when no white person shall be present, or being present, shall neglect, or refuse, to give evidence, or to be examined upon oath, concerning the same, in such case, the owner, or other person, having the possession, or government, of such slave, shall be deemed and adjudged to be guilty of such offence; and be proceeded against accordingly, without further proof, unless such owner, or other person, shall make the contrary appear by good and sufficient evidence, or shall, on oath, clear and exculpate himself; which oath, every court, where such offence shall be tried, shall have power to administer, and to acquit the offender accordingly, if clear proof of the offence be not made by two witnesses at least.—(b.)

**XXX.** If any person shall wilfully, maliciously, and deliberately, murder any slave within this state, such person, on conviction, shall suffer death, without the benefit of clergy. And if any person shall kill any slave, on sudden heat and passion, such person, on conviction, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding six months.—(c.)

**XXXI.** If any slave shall presume to strike a white person, such slave, upon conviction before the justice, or justices, and freeholders, as hereinafter directed, shall, for the first and second offence, suffer such punishment as they shall in their discretion think fit, not extending to life, or limb; and for the third offence, shall suffer death; but in case any slave shall grievously wound, maim, or bruise, any white person, though it shall be only the first offence, such slave shall suffer death:—Provided that such striking, wounding, maiming, or bruising, be not done by the command, and in the defence of the person, or property of the owner, or other person having the care, or government, of such slave; in which case, the slave shall be wholly excused, and the owner, or other person, as aforesaid, shall be answerable, as far as by law he ought.—(d.)

**XXXII.** All crimes and offences committed by slaves in this state, for which capital punishment may lawfully be inflicted, shall be heard, examined, tried, and adjudged, and finally determined, by any two justices of the peace, and any number of freeholders, not less than three, nor more than five, in the district where the offence shall be committed, and at a place where they can be most conveniently assembled; either of which justices, on complaint made, or information received, of any such offence committed by a slave, shall commit the offender to the safe custody of some constable of the district, and shall,

(b)—1740, P. L. p. 172. (b)—Ibid. p. 172. (c)—1821, Sess. Acts, p. 12.  
(d)—1740, P. L. p. 169.

without delay, by warrant under his hand and seal, call to his assistance, and request any one of the nearest justices of the peace to associate with him; and shall, by the same warrant, summon the number of freeholders aforesaid from the neighborhood, to assemble and meet together with the said justices, at a certain day and place, not exceeding six (0) days after the apprehending of such slave, or slaves; and it shall be left to the said justices and freeholders, at any time within six days after the apprehending of such slave, and his being committed by a justice of the peace for trial, to postpone the said trial to such further time, as they shall think proper, and appoint, upon oath being made before them, or affidavit produced, that the person, or persons, who were witnesses to the fact, for which such slave was apprehended, are ill, and cannot, with safety, attend such trial, or are at too great a distance to be there, within the time appointed for such trial (0): And the justices and freeholders, being so assembled, shall cause the slave accused, or charged, to be brought before them, and shall hear the accusation, that shall be brought against such slave, or slaves, and his, her, or their, defence, and shall proceed to the examination of witnesses and other evidence, and finally hear and determine the matter brought before them, in the most summary and expeditious manner; and in case the accused shall be convicted, of any crime, for which, by law, the punishment would be death, the said justices shall give judgment, and award and cause execution of their sentence to be done, by inflicting such manner of death, as the said justices, with the consent of the said freeholders, shall direct, and which they shall judge will be most effectual to deter others from offending in the like manner: And if any crime, or offence, not capital, shall be committed by any slave, such slave shall be proceeded against and tried for such offence by any one justice of the peace, and two freeholders of the district, where the offence shall be committed, and they can be most conveniently assembled; and the said justice and freeholders shall be summoned and called together, and shall proceed upon the trial of any slave, who shall be charged with committing an offence not capital, in like manner as in cases capital: And in case any slave shall be convicted before them of any offence, not capital, the said justice, with the consent of the said freeholders, shall give judgment for the inflicting of any corporal punishment not extending to life, or member, as he, and they, shall think fit; and shall cause execution to be done accordingly: Provided that if the said justice, and freeholders, upon the examination of any slave, charged before them of an offence not capital, shall find the same to be a greater offence, which may deserve death, they shall, with all

convenient speed, summon and request the assistance of another justice, and one, or more, freeholders, not exceeding three; which said justice and freeholders, newly assembled, shall join with the justice and freeholders, first assembled, and proceed in the trial to final judgment and execution, if the case shall so require, in manner directed for the trial of capital offences: And provided also, that two justices and one freeholder, or one justice and two freeholders, of the said two justices and three freeholders, shall make a quorum, and the conviction, or acquittal of any slave, or slaves, by such a quorum, shall be final in all capital cases; and that, on the trial of slaves for offences not capital, it shall be sufficient, if, before sentence, or judgment shall be given for inflicting corporal punishment, not extending to life, or limb, one justice, and any one of the freeholders shall agree that the slave accused is guilty of the offence charged.—(g.)

**XXXIII.** When the justice, or justices, and freeholders, shall be assembled for the trial of any slave, in pursuance of the directions of this act, the said justices shall administer to each other the following oath: “I,      do solemnly swear, (or affirm,) in the presence of Almighty God, that I will truly and impartially try and adjudge the prisoner, or prisoners, who shall be brought before me upon his, or their, trial, and honestly and duly, on my part, put in execution on this trial, an act, entitled, “An act, for the better ordering and governing of negroes and other slaves in this state,” according to the best of my skill and knowledge: So HELP ME GOD.” And the said justice, or justices, having taken the aforesaid oath, shall immediately administer the said oath to every freeholder, who shall be assembled, as aforesaid; and shall forthwith proceed upon the trial of such slave, or slaves, as shall be brought before them.—(g.)

**XXXIV.** The evidence of all free Indians, and of slaves, without oath, shall be allowed and admitted in all causes whatsoever, for, or against, a slave accused of any crime or offence whatsoever; the weight of which evidence being seriously weighed and considered, and compared with all other circumstances attending the case, shall be left to the consciences of the justices and freeholders.—(g.)

**XXXV.** The evidence of any free Indian, or slave, without oath, shall be allowed, in all cases, against free negroes, Indians, (Indians in amity with this state excepted,) mulattoes, or mustizoes: and all crimes and offences, committed by free negroes, Indians, (Indians in amity, as aforesaid, excepted,) mulattoes and mustizoes, shall be proceeded in, heard, tried, adjudged, and determined by the justices and freeholders appointed.

ed for the trial of slaves, in like manner as directed for the trial of crimes and offences committed by slaves.—(g.)

XXXVI. The said justices, or any of them, shall have power to summon and compel all persons, whomsoever, to appear and give evidence upon the trial of a slave; and if any person shall neglect, or refuse, to appear, or give evidence; or if the master, or other person, having the care or government of any slave, shall prevent or hinder such slave from appearing, or giving evidence, in any matter depending before the justices and freeholders aforesaid, the said justices shall bind every such person offending, as aforesaid, by recognizance, with one or more sufficient sureties, to appear at the next general sessions, to answer for such their offence and contempt; and for default of finding such sureties, commit such offender to prison.—(h.)

XXXVII. If any master, or other person, having the charge, or government, of any slave, accused of any capital crime, shall conceal, or convey away such slave, so that he cannot be brought to trial and condign punishment, such master, or other person, so offending, shall forfeit the sum of one hundred and fifty dollars; but if such slave shall be accused of a crime, not capital, then such master, or other person, shall forfeit only the sum of thirty dollars.—(m.)

XXXVIII. If any slave shall commit any crime, or offence, which, by the laws of this state, is felony, without the benefit of clergy, and for which the offender ought to suffer death, such slave being duly convicted thereof, shall suffer death, to be inflicted in such manner as the justices, with the advice and consent of the freeholders giving judgment on the conviction of such slave, shall direct.—(h.)

XXXIX. The several crimes, and offences, hereinafter particularly enumerated, are hereby declared to be felony, without the benefit of clergy; that is to say, if any slave, free negro, Indian, or mustizo, shall, wilfully, and maliciously, burn, or destroy, any stack of rice, corn, or other grain, the product of this state; or shall wilfully, and maliciously, set fire to, burn, or destroy, any tar-kiln, barrels of pitch, tar, turpentine, or rosin, or any other the goods, or commodities of the produce, or manufacture, of this state; or shall feloniously steal, take, or carry away, any slave, being the property of another, with intent to carry such slave out of the state; or shall wilfully, and maliciously, poison, or administer poison, to any person, free man, or woman, servant, or slave, every such slave, free negro, or mulatto, mustizo, or Indian, (except as before excepted,) shall suffer death as a felon.—(h.)

XL. Any slave, who shall be guilty of homicide of any sort, upon any white person, except by misadventure, or in defense,

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(g)—1740, P. L. p. 166. (m)—Ibid. p. 168. (h)—Ibid. p. 167.

of his master, or other person under whose care and government such slave shall be, shall, upon conviction thereof, suffer death: and every slave who shall raise, or attempt to raise, an insurrection in this state, or shall endeavor to delude, or entice, any slave to runaway and leave this state, provided it shall appear that such slave, so endeavoring to delude, or entice, other slaves to runaway and leave this state, shall have actually prepared provisions, arms, ammunition, horse, or horses, or any boat, canoe, or other vessel, whereby such intentions shall be manifested, (o) his accomplices, aiders, and abettors, shall, upon conviction, suffer death: Provided always, that it shall be lawful for the justices, who shall pronounce sentence against such slaves, with the consent of the freeholders, if several slaves shall receive sentence at one time, to mitigate and alter the sentence of any slave, except such as shall be convicted of the homicide of a white person, who they may think shall deserve mercy, and may inflict such corporal punishment, other than death, as they in their discretion shall think fit: Provided, that one or more of the said slaves, who shall be convicted of the crimes, or offences aforesaid, where several are concerned, shall be executed for example, to deter others from offending in the like kind.—(n.)

XLI. In case any slave shall be put to death, in pursuance of the sentence of the justices and freeholders aforesaid, the said justices, or one of them, with the consent of any two of the freeholders, shall, before they award and order their sentence to be executed, appraise and value the said slaves so to be put to death, at any sum not exceeding one hundred and twenty-two dollars and forty-five cents, and shall certify such appraisement to the treasurer, who shall pay the same; one moiety thereof at least to the owner of the slave, or to his order, and the other moiety, or such part thereof as such justices and freeholders shall direct, to the person injured by the offence, for which such slave shall suffer death.—(n.)

XLII. The several constables, in their respective districts in this state, where any slave shall be sentenced to suffer death, or other punishment, shall cause execution to be done, of all the orders, warrants, precepts, and judgments, of the justices appointed to try such slaves; for the charge and trouble of which, the said constable, or constables, respectively, shall be paid by the state, (except in such cases, as shall appear to the said justices and freeholders to be malicious and groundless prosecutions, in which cases the charges shall be paid by the prosecutors) for whipping, or other corporal punishment, not extending to life, the sum of sixty cents, and for any punishment extending to life, the sum of three dollars; and for keeping and main-

(o)—1740, P. L. p. 237. (n)—ibid. p. 167.

taining each slave, per day, twelve cents; for the levying of which charges, against the prosecutor, the justice, or justices, shall issue their warrants; and the constables, who shall be directed to cause execution to be done, shall have power to press one, or more slaves, in, or near, the place where such whipping, or other corporal punishment, shall be inflicted, to whip, or inflict, such other corporal punishment on the offenders; and such slave, or slaves, so pressed, shall be obedient to, and observe all the orders and directions of the constable, in and about the premises, on pain of being punished by the said constable by whipping on the bare back, not exceeding twenty lashes; which punishment the said constable shall be authorized to inflict; and the constable, if he presses a negro, shall pay such negro fifteen cents for executing such sentence, or judgment.—(q.)

XLIII. Every constable and other person, who shall wilfully neglect the performance of any duty required of him by this act, shall, for every such neglect, or offence, forfeit the sum of twelve dollars; and every justice, or freeholder, wilfully omitting the performance of his duty in the execution of this act, shall, for every such offence, forfeit, every justice, the sum of twenty-four dollars, and every such freeholder, the sum of nine dollars, to be recovered by warrant, before any justice of the peace of the district where the offence shall be committed, or before any court of record having competent jurisdiction, as the case may require, and applied, one half to the use of the state, and the other half to him who will sue for the same. And it shall be the duty of the justices of the court of sessions, to give the offences against this act, in charge, in open court; and all grand jurors, justices of the peace, constables, and other officers, shall make due presentment of such of the said offences, as shall come to their knowledge.—(a.)

XLIV. This act shall be construed most beneficially for carrying the same into execution, and for the encouragement and jurisdiction of all persons concerned in the execution thereof; and no record, warrant, precept, or commitment, to be made by virtue of the same, nor the proceedings thereupon, shall be reversed, avoided, or any wise impeached, by reason of any default in form; and if any person shall be, at any time, sued for putting in execution any of the powers contained in this act, and judgment be given for the defendant, he shall, in every such case, be entitled to double costs.—(b.)

XLV. The foregoing fines and forfeitures shall be recovered, when they do not exceed twelve dollars, before a justice of the peace, in the manner directed for the trial of small and mean causes; and when they exceed that sum, in any court having competent jurisdiction; and shall be applied, one half to the use

(q)—1740, P. L. p. 168. (a)—Ibid. p. 174. (b)—Ibid. p. 175.

## SLAVES.

of the state, and the other half to the person who will inform and sue for the same.—(b.)

XLVI. No slave shall hereafter be emancipated, but by act of the legislature.—(c.)

XLVII. If any person, or persons, shall bring, or cause to be brought, into this state, any free negro, or person of color, and shall hold the same as a slave, or sell, or offer for sale, the same, to any person, or persons, in this state, as a slave, every such person, or persons, shall pay for every such free negro, or free person of color, the sum of one thousand dollars, over and above the damages, which may be recovered by such free negro, or free person of color, to any person, or persons, who will sue for, and recover, the same; which may be done either by indictment, or action, in nature of ravishment of ward, established by law.—(d.)

XLVIII. Every master of a vessel, or other person, who shall bring into this state, by water, or by land, any free negro, or mulatto, shall forfeit and pay, for every free negro, or mulatto, so brought, the penalty of five hundred dollars, to be recovered by action of debt, or by bill, plaint, or information, in any court of record, having jurisdiction of the amount; one moiety to be appropriated to the state, and the other to the prosecutor, or person, who shall inform thereof; and the defendant, in every such case, shall be required to give special bail: Provided, that this act shall not extend to any master of vessels bringing into this state, any free negro or mulatto, employed on board, or belonging to such vessel, and shall therewith depart; nor to any white person travelling into this state, having any free negro, or mulatto, as a servant; but if said servant shall remain longer than six months within the state, then such white person shall be subject to the penalty aforesaid, and the free negro, or mulatto, shall be dealt with, as is provided in the case of free negroes, or mulattoes, migrating into this state: Provided, that nothing herein contained, shall affect any free person of color, being a native of this state, who shall return within the limits of this state within two years, or who shall leave this state as a servant of any white person, and shall return with any white person in the same capacity.—(d.)

XLIX. It shall not be lawful for any free negro, or mulatto, to migrate into this state; and every free negro, or mulatto, who shall migrate into this state, contrary to this act, shall, and may be, apprehended and carried, by any white person, before some justice of the peace of the district, or parish, where he, or she, shall be taken; which justice is hereby required to examine such free negro, or mulatto, and to order him, or her, to leave this state. And every free negro, or mulatto, so ordered to

(b)—1740, P. L. p. 175. (c)—1820, Sess. Acts, p 22. (d)—Ibid. p. 22.

leavo the state, and thereafter remaining longer than fifteen days within the same, or having left the state, and thereafter returning to this state, unless it be in consequence of shipwreck, or some unavoidable accident, or as a seaman, on board, or belonging to a vessel, with which he shall depart, or as a servant to any white person, travelling into this state, upon proof thereof, made before any magistrate and three freeholders, and on conviction thereof, shall be subject to a fine of twenty dollars; and in default of the payment thereof, shall be publicly sold, after ten days' notice, for a term of time, not exceeding five years: And if such free negro, mulatto, or mustizo, shall be found in this state, after the lapse of ten days, after paying such fine, or after such servitude, under such sale, he, or she, shall be liable to be proceeded against in like manner, and shall be sold for the like sum, and for a term not exceeding five years, until such free negro, mulatto, or mustizo, shall depart the state.—(a.)

L. If any white person shall be duly convicted of having directly, or indirectly, circulated and brought within this state, any written, or printed paper, with intent to disturb the peace, or security of the same, in relation to the slaves of the people of this state, such person shall be adjudged guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and imprisoned, not exceeding one year: And if any free person of color shall be convicted in the mode provided by law, for the trial of such persons, of such offence, he, or she, shall, for the first offence, be sentenced to pay a fine, not exceeding one thousand dollars; and, for the second offence, shall be whipped, not exceeding fifty lashes, and be banished from this state; and any free person of color, who shall return from such banishment, unless by unavoidable accident, shall suffer death without the benefit of clergy.—(a.)

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**SUITS, FRIVOLOUS AND VEXATIOUS.**

In all actions, suits, bills, or plaints, brought or prosecuted, against any justice of the peace, sheriff, constable, or other officer, civil, or military, in this state, concerning any matter, or thing, by any of them done in pursuance of their respective offices, it shall be lawful for every such officer, and all others, who, in their aid, or assistance, or by their command, shall do any thing in their said respective offices, to plead the general issue, *not guilty, or owe nothing*, and to give the special matter in

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(a)—1828, *Sessional Acts*, p. 23.

evidence, to the jury; which shall try the same; and if such special matter, had it been pleaded, would have been sufficient in law to discharge the defendant, or defendants, of the trespass, or other matter, laid to his, or their, charge, and the jury shall find for the said defendant, or defendants, or the plaintiff there-in become nonsuit, or suffer a discontinuance, the judge, or judges, before whom such matter shall be tried, or such action brought, shall tax and allow to such defendant, or defendants, his, or their, double costs, for which an execution shall issue as in other cases.—(a.)

II. In all cases of trespass, *quare clausum fregit*, wherein the defendant shall, in his plea, disclaim to make any title to the land, in which the trespass is by the declaration supposed to be done, or the trespass be by negligence, or involuntary, such defendant shall be permitted to plead a disclaimer, and that the trespass was by negligence, or involuntary, and a tender, or offer, of sufficient amends, for such trespass, before action brought; whereupon, or upon some of them, the plaintiff shall join issue, and if such issue be found for the defendant, or the plaintiff be nonsuited, the plaintiff shall be clearly barred of his action, and all other suits concerning the same.—(b.)

III. In all actions upon the case of slanderous words, if the jury, upon the trial of the issue, or upon inquiry of damages, do find, or assess, the damages under the sum of eight dollars and fifty-seven cents, the plaintiffs in such actions shall recover only as much costs, as damages.—(b.)

IV. In all cases whatsoever, where judgment shall be given for defendant, he shall recover his costs against the plaintiff, and have execution for the same.—(c.)

### TAXES.

**E**VERY enquirer, assessor, and collector, appointed by any tax act, which may be passed for raising supplies for the support of the government of this state, shall, before he enters upon the duties of his said office, take the following oath before some justice of the peace: “ I, \_\_\_\_\_ do solemnly promise and swear, that I will, to the best of my knowledge, skill, and judgment, ascertain the several qualities of the lands lying and being within the \_\_\_\_\_, where I am appointed assessor; and when no return of the qualities of the same shall have been made, that I will not, for any fee, or reward, favor, partiality, self interest,

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(a)—1733, P. L. p. 135. (b)—1712, Ibid. p. 102. (c)—Ibid. p. 74.

malice; or hatred, assign any other quality to such lands, than in truth and good conscience, they appear to me to deserve; and that I will impartially assess all other property, and professions by law directed to be assessed; to the best of my judgment, according to the true intent and meaning thereof: So help me God." And if any assessor shall presume to execute the said office without having taken the said oath, such assessor shall forfeit and pay the sum of two hundred and fourteen dollars and thirty cents, to be recovered by any person, who will inform and sue for the same, by action of debt in the court of common pleas.—(a.)

II. The said enquirers, assessors, and collectors, shall give bonds, each in the sum of four thousand two hundred and eighty-six dollars, with security, to be approved by the commissioners, who approve the security given by the sheriffs of the several districts, in which they are respectively appointed; which bond shall be lodged by the said commissioners, in the treasury of this state (p): And every enquirer, assessor, and collector, shall hold his office for the term of four years, and until another shall be elected.—(b.)

III. Each enquirer, assessor, and collector of taxes, on closing his accounts with the treasurer, and not before, shall receive      per cent. on the amount collected, except the collectors of St. Philips and St. Michaels, who shall receive      per cent. on the amount collected by them.—(c.)

IV. The enquirers, assessors, and collectors, of the parishes of St. Philips and St. Michaels, or any one, or more, of them, shall, on or before the (o) day of      in every year, having previously given three weeks' notice in the gazette, go once to the several houses of the inhabitants of the said parishes, and inquire into, and take an account of, all the real estates, and particularly in what parts of the said parishes the lands are situated, and of the slaves and other taxable property of the inhabitants, which they shall be possessed of, interested in, or entitled to, in their own right, or in the right of any other person; and the enquirers in the other parishes and districts, shall fix on convenient places to receive returns and payments; of which places they shall give at least three weeks' public notice, at three sev-

(a)—1788, P. L. p. 455. (p)—Ibid. 440; and 2d Faust, p. 497. Collectors for the districts of Edgefield, Richland, Abbeville, Kershaw, Fairfield, St. John's, Colleton, St. Bartholomews, and St. Helena, to give bonds in the sum of fifteen thousand dollars; for the districts of Williamsburg, Pendleton, Barnwell, Darlington, Claremont, Newberry, Laurens, Chester, York, Spartanburg, the parishes of St Paul's, St. John's Berkley, St. Peter's, St. Luke's, All Saints, Prince George, Winyaw, in the sum of eight thousand dollars; for Charleston district, in the sum of sixty thousand dollars; and for all other districts, or parishes, in the sum of five thousand dollars.—1821, Sess. Acts, p. 6. (b)—1791, 1st Faust, p. 15; see also Sess. Acts, 1812, p. 35. (c)—1802, 2d Faust, p. 486 (o)—Time regulated by annual tax act.

ral times, and three several public places, so that no person be obliged to attend them more than fifteen miles distance from his own house.—(d.)

V. The enquirers, assessors, and collectors, respectively, shall begin their enquiry on the (e) day of in every year; and it shall be the duty of every person, his, or her, agent, in giving in his, or her, property, or the property of others, whom he, or she, may represent, both real and personal, which shall be liable to pay a tax, under the provisions of any tax act, to make his, or her return, on oath, to the tax collector of the parish, county, or district, in which he, or she, usually resides; and, on oath, to designate and specify for which particular election district, in this state, each portion of his, or her, property, real or personal, liable to pay tax, is so returned; and also, to describe the quantity and quality of all lands, and the number of negroes so returned by him, or her, in each district; and in case any person liable to pay tax, as aforesaid, shall refuse, or neglect, to give in his, or her, return, in manner and form as above required, it shall be the duty of each tax collector in this state to proceed against all such defaulters by a double tax.—(g.)

VI. Every person shall be liable to pay taxes for the property, real, or personal, of which he, or she, shall stand seized, or have the custody, either as attorney, or agent, or guardian, or executor, or in his, or her, own right, as tenant in fee simple, or by courtesy, or for life, or in right of his wife, on the first day of October in every year; and all taxes on real, or personal, property, which shall be sold and conveyed, on the first of October, in any year, shall be returned and paid by the seller thereof. (h) And it shall be the duty of every tax collector, to specify, in words at full length, the sum paid by every person, for his general tax, distinguishing what each person may pay for poor, or bridge tax, in the receipt to be given him.—(c.)

VII. Every person acting as attorney, or trustee, of any other person, or persons, not resident in this state, to discharge himself from his liability, as attorney, or trustee, shall make oath before the collector of his parish, or district, that he hath bona fide renounced his power and attorneyship, before the payment of the tax becomes due, without having done it with an intention to avoid the payment thereof: Provided always, that if such attorney, or trustee, shall, within one year next after such oath made, again become attorney, or trustee, for such absent person, or act as such, such attorney, or trustee, shall be liable to pay the said tax as before directed; and for levying thereof,

(d)—1788, P. L. p. 436. (e)—Time regulated by annual tax act. (g)—1808, Sess. Acts, p. 39. (h)—1788, P. L. p. 439. (c)—1812, Sess. Acts, p. 16.

## TAXES.

408

The same remedies shall be used, as for levying the tax to become due by virtue of any tax act, on the proper estate of such attorney, or trustee. —(h.)

VIII. Any person neglecting, or refusing, to give in his, or her, account of the lands and slaves, or other taxable property, to the said collectors, respectively, at such time and place, as they shall appoint, shall be deemed a defaulter, and shall be by the said collectors, doubly taxed for all his, or her, lands, or slaves, or other taxable property: and if any person shall neglect, or refuse, to pay his, or her, tax, at the time and place to be appointed for the payment thereof, as aforesaid, the said collectors shall immediately hang up, for ten days, a list of defaulters, at (the Exchange, in Charleston,) some public place in the respective districts, or parishes; and, if the taxes are not paid within those ten days, they shall, without further delay, issue their warrants, to be by them, respectively, signed and sealed for that purpose, directed to the sheriff of the district (o), where such defaulter resides, requiring him to levy the same by distress and sale of the defaulter's estate, real, or personal: Provided that no negro slave shall be sold to satisfy such warrant, for a longer term than one year, nor land for a longer term than seven years; and provided also, that not more shall be put up for sale in one lot, than the tax-collector shall believe will be sufficient to pay the sum due by such defaulter, together with the charges of legal process: And whenever any sum due by any defaulter, as aforesaid, shall be less than one dollar and seven cents, the said collectors shall and may proceed summarily, by distress and sale; for which they shall not be entitled to demand or receive any fee, reward, or compensation (p).— And if no such distress can be found, and the defaulter shall neglect, or refuse, to point out lands, or to produce goods, or effects, wherof the monies so assessed may be forthwith levied, the said sheriff, by virtue of the said warrant, shall take the body of such defaulter, and convey him to the common gaol, in the district where such defaulter resides; which warrant shall run in these words, to-wit: "A. B. collector of the general tax for the parish, or district, of        in South-Carolina, to sheriff of the said district, or to his lawful deputy: Whereas

hath been duly assessed by me the subscriber, collector of the tax for the parish, or district, of        the sum of        for defraying the charges of which the said        hath neglected to pay: These are, therefore, in the name of the state, strictly to charge and command you to levy, by distress and sale, of the lands, goods, and chattels of the said        the sum of        together with the costs and charges thereof: and in case the

(h)—1788, P. L. p. 439. (o)—1803, 2d Faust, p. 493. (p)—1791, 1st Faust, p. 170.

said \_\_\_\_\_ shall refuse, or neglect, to point out lands, or produce goods and chattels sufficient to levy the said distress, and the charges thereon, that then you take the body of the said \_\_\_\_\_ and convey him to the common gaol in the district, commanding you, the keeper of the said gaol, to detain the body of the said \_\_\_\_\_ in your custody, until \_\_\_\_\_ shall pay the sum of

together with the charges of keeping and detaining, as aforesaid; and for so doing, this shall be your sufficient warrant: Given under my hand and seal, &c." And the sheriff, or other officer, keeping such gaol, shall detain such person therein, without bail, or mainprize, until the debt and charges aforesaid shall be satisfied; and the sheriff, to whom such warrant shall be directed, shall take from such defaulter the following fees, in the execution of his office, to-wit: for serving an execution, one dollar; and on all sums to be levied, as aforesaid, five per cent, [and the usual mileage (o):] And the collectors, respectively, for every such warrant, shall have from such defaulter the sum of fifty-three cents.—(m.)

X. If any taxable person shall neglect to give an account, as aforesaid, of his, or her, estate, to the said collectors, by the time limited by any tax-act, or shall neglect to pay his, or her, own tax, or the tax of any person, for whom he, or she, is guardian, executor, attorney, or trustee, by the time limited, the said collectors, respectively, where such taxable persons live, shall issue their warrants in the manner above directed: and in case the said collectors shall not have just information of the amount of such person's tax, they shall issue their warrants for double what they shall judge such person ought to be rated, and deal with them in all other respects as defaulters.—(n.)

XI. If any person, in giving in, or rendering his, or her, account of taxable property, shall wilfully conceal any part thereof, such person shall forfeit five times the value of the tax of what is so concealed.—(q.)

XII. It shall be the duty of all tax-collectors, annually, to inquire for all lands owned by persons out of this state, and to collect taxes and arrears of taxes thereon; and if such taxes and arrears shall not be paid at, or before, the times appointed for the payment of the general tax, then the tax-collectors, respectively, after giving twelve months' notice in the State Gazette, shall proceed to sell, and convey the same in fee simple, in portions, or lots, not exceeding six hundred and forty acres, or so much thereof as will be sufficient to pay the taxes and arrears of taxes, and costs incurred, of those who make default in payment thereof: Provided that nothing herein contained, nor any law heretofore passed, shall affect any persons, who shall have

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(o)—1803, 2d Faust, p. 493. (m)—1788, P. L. p. 437. (n)—Ibid. p. 438.  
(q)—Ibid. p. 437.

obtained subsequent grants, not exceeding six hundred and forty acres, and have actually settled the same, or shall settle the same, within six months from the date hereof; and have paid taxes therefor since the date of their grants.—(a.)

XII. In case any tracts of land, negroes, or other taxable property, shall be found by the collectors to belong to any person residing without the limits of this state, who has no attorney, or trustee, legally constituted in this state, or which have not been returned to any of the collectors, then the said collectors, respectively, shall proceed to charge such lands, negroes, or other taxable property, for the payment of all taxes due, or to become due, rateably and proportionably, according to the quantity and quality of the lands, negroes, or other taxable property, as if the same were in the actual possession of some person living and residing in this state; and forthwith to publish and give notice of such their charge, and assessment, in the several Gazettes of this state; and in case the sum, or sums of money, with which such lands, negroes, or other taxable property shall be so charged, as aforesaid, and the lawful interest, from time to time, of the assessments made, shall not be paid to the inquirers, assessors, and collectors, within one year next after notice shall be given, as aforesaid, then such lands, negroes, or other taxable property, shall be forfeited to this state, and shall be sold at public vendue, by the commissioners of the treasury for the time being, for general indents of this state: Provided that nothing herein contained shall extend to prejudice the rights of infants, or feme coverts, who shall be entitled to their lands, negroes, or other taxable property, upon claiming the same in two years after coining of age, or becoming discovered, upon their paying and discharging all taxes and arrears of taxes, that may be due and unpaid thereon, and satisfying the lessee of such lands for all improvements made thereon.—(b.)

XIII. No tax-collector shall receive, or take in payment of taxes, any order, draft, or check, of either of the treasurers.—(c.)

XIV. The treasurers in Charleston, and Columbia, shall, annually, procure to be printed, so many blank tax returns adapted to the nature of the taxes, which the legislature shall from time to time impose, as will be necessary: and the said treasurers shall annually furnish each tax-collector, in their respective districts, with so many of the said blanks as will enable him to perform the duties required by law; and each tax-collector shall demand, and take from each person making a return, two copies of such tax returns, signed and sworn to, as the law directs; (c) which oath, or affirmation, shall be in the words

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(a)—1803, Dec. 17, 2d Faust, p. 488. (b)—1788, P. L. p. 439. (c)—1802, 2d Faust, p. 469.

following: "I, do swear, (or affirm,) that the account, which I now give in, is a just and true account of the quality and quantity of the lands, and number of slaves, which I was possessed of, interested in, or entitled unto, on the first day of October, in the year of our lord either in my own right, or in the right of any other person, or persons, whatsoever, as guardian, executor, attorney, agent, or trustee, or in any other manner whatever, according to the best of my knowledge and belief; and that I will give just and true answers, according to the best of my knowledge, to all questions that may be asked me touching the same; and this I swear without any equivocation, or mental reservation whatsoever: So help me God."--(d.)

XV. If any person, between the time of rendering his, or her, account to the collectors, as aforesaid, and the time of paying his, or her, tax, shall be about to depart this state, the said collectors shall forthwith proceed to levy the same, notwithstanding the day of payment is not already come, unless such person shall give security, to be approved by the tax-collector, for the payment thereof, at the time appointed.--(g.)

XVI. When all the collectors, who were appointed for any parish, or district, are dead, and the tax returns not closed with the commissioners of the treasury, the collector, who shall be thereafter appointed, shall demand receipts, or administer an oath, or procure other satisfactory proof from the inhabitants of such district, or parish, in order to ascertain what taxes may be still due, and to enable the public to discover what sums of money may be due from the deceased tax-collector; and if any executor, or administrator, of a deceased tax-collector, neglect, or refuse, to produce the accounts of the deceased, or to give all the information in his power on the subject, the treasurer shall proceed according to law, against the estate of the deceased tax-collector.--(h.)

XVII. The taxes imposed by any tax act, shall be preferred to all securities and incumbrances whatsoever; and in case any person shall die between the time of giving in his, or her, tax account, and payment, and any goods and chattels of the deceased, to the value of the sum assessed, shall come into the hands of his, or her, executors, or administrators, they shall pay the same by the time limited, as aforesaid, prior to all judgments, mortgages, and debts, whatsoever, (funeral and other expenses of the last sickness, and charges of probate of will, or of letters of administration, excepted); (k) and, in default thereof, a warrant of execution shall issue against the proper lands, goods, and chattels, of such executors, or administrators.--(m.)

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(d)--1812, Sess. Acts, p. 7. (g)--P. L. p. 438. (h)--1802, 2d Faust, p. 496. (k)--1789, P. L. p. 494. (m)--1783, Ibid. p. 438.

**XVIII.** No person holding any office of profit under this state, or having any demand against the state, shall be entitled to receive any sum of money, which may be due to him from the state, until his taxes are paid and satisfied; and the treasurers shall, before they pay any person holding an office of profit, or having such demand, the sum that may be due to him, require of him, a receipt from the tax collector, where such person resides, or ought to pay his taxes, stating that his taxes are paid and satisfied: And upon neglect, or refusal, of any person holding such office, or having such demand, to produce such receipt, the treasurers shall not pay such person the sum, or sums, of money which may be due to him, until satisfactory proof is adduced to them, that such taxes have been paid, or the parties agree to discount the same; and if the treasurer should pay to any person holding an office of profit, or having any demand, as aforesaid, any sum which may be due to him, without having such receipt produced, or satisfactory proof, or discount, made, as above required, he shall be liable for all losses that may arise therefrom to the state.—(n.)

**XIX.** It shall be the duty of the tax collectors in their respective districts, when thereto required by the comptroller-general, to issue executions for all arrears of taxes, certified by the said comptroller to be due to the state.—(a.)

**XX.** The several tax collectors shall place their warrants against any person, or persons, failing to make payment of their taxes, for collection, in the hands of the sheriffs, (or coroners, when the sheriffs are interested,) of the districts respectively, and in the hands of no other person, or persons, whatsoever; and the sheriffs and coroners shall be entitled, on the service of such warrants, to the usual mileage for the service of executions; and the said tax collectors shall take the sheriff's, or coroner's receipts, for such executions, as shall be issued for taxes, which they shall, respectively, produce in settlement with the treasurer; and it shall be the duty of the treasurer to transmit to the comptroller, without delay, certified copies of all such receipts, that the comptroller may be enabled to inspect the conduct of the sheriffs and coroners. (b) And it shall be the duty of the sheriffs throughout this state, whenever property sold under executions, shall not produce the amount of the tax, with the fees due thereon, by reason of the non-compliance of the purchaser, or any other cause whatsoever, to take the body of the defendant; and it shall not be required of such sheriff, or sheriffs, to proceed to any other sale of the said property, unless in cases of intestates.—(c.)

**XXI.** If any collector shall make any distinction of persons in issuing executions, the taxes of such persons, in addition to

(n)—1802, 2d Faust, p. 491. (a)—*Ibid.* p. 487. (b)—*Ibid.* pp. 492-3.  
(c)—1814, Sec. Acts, p. 19.

the lien the State has on the property of such persons, shall be considered as thereby assumed by such tax collector; and the treasurer at Charleston and Columbia shall, in their respective departments, debit such tax collector with such arrearages of tax, and issue executions therefor immediately, and lodge such executions with the sheriff (or coroner) of the district in which such collector shall reside, or have property. And if the sheriff, or coroner, in whose hands such execution shall be lodged, shall make any distinction of persons, in levying the same, or shall retain the same for a longer time than two months, without making a return thereof, he shall be chargeable with the said executions, in addition to the liability of the collectors and individuals so originally in arrears as aforesaid.—(a.)

XII. The commissioners of the treasury, enquirers, sheriffs, constables, and other magistrates, and officers, who shall neglect, or refuse, to perform the several matters, by any tax act required of them, respectively, to be done, within the time in such act prescribed, shall, for every such neglect, or refusal, forfeit the sum of four hundred and twenty-eight dollars, and sixty cents; and the several assessors and collectors, or either of them, who shall neglect, or refuse, to do, and perform, the several matters required of them, respectively, to be done, within the time by any tax act prescribed, shall, for every such neglect, or refusal, forfeit the sum of twelve hundred and eighty-five dollars and eighty cents, to be sued for by the commissioners of the treasury, for the use of the state, or by any other person, or persons, who shall sue for and recover the same.—(c.)

XIII. The enquirers, assessors, and collectors, for the several parishes and districts, within this state, shall close their accounts with the treasurer, on, or before, the      day of      ; and at the closing thereof, shall exhibit two lists, one containing all the taxable property returned to them, annexed to the names of the persons who returned the same, with the sums paid by them respectively; and another containing all the taxable property lying in the parish, or district, which has come to their knowledge, and has not been returned; which lists shall be given to the treasurers, and their accounts closed on oath, in the following words: "I, A. B. do swear (or affirm) that the return I now make, is a just and true return of all the taxable property, made for the collection district of      ; and that the sum of      dollars, by me now paid, is the whole of the monies I have received for the general taxes of the said district, since my last return;" which oath, or affirmation, the treasurer, shall impose, and cause to be indorsed on the said return: And the collector for each parish or district, shall give an account, in writing, upon oath, as aforesaid, of their own lands, slaves, and

(a)—1802, 2d Faust, p. 421. (c)—1788, P. L. p. 438.

either taxable property, to the commissioners of the treasury; and pay the taxes thereon according to the rates appointed by the tax act, for such year respectively. (d) And every tax collector shall describe such property as may be contained in the list containing the taxable property in his district, which has come to his knowledge, and not been returned, in the most particular manner he can, annexing thereto the name, or names, of the owner, or owners, or reputed owner, or owners, of such property.—(e.)

XXIV. The several tax collectors, in each fiscal division of the state, shall exhibit, in some column of their returns, the number of acres of land lying within their respective divisions, and the number of acres lying elsewhere, and for which taxes shall be paid thereon; in like manner, they shall exhibit, in other columns, the number of negroes in their respective divisions, and of those elsewhere, and where, or which taxes shall be paid them; and in other respective columns, exhibit the amount of taxes in their respective divisions, on every different article taxed by law: And the treasurer of each division, and the comptroller-general, shall preserve these columns, in their aggregate of taxes to be laid before the next meeting of the legislature.—(a.)

XXV. If any assessor and collector, shall, at any time, neglect, or refuse, to give in, upon oath, to the commissioners of the treasury, a just and true account of all monies received by him, or due to the state, on account of any tax within his district, by the time prescribed, it shall be lawful for the said commissioners, or any one of them, by warrant under his, or their, hands and seals, to commit such collector to the common gaol of the district, wherein he resides, there to remain without bail, or mainprize, until he shall have rendered, upon oath, to be taken before a justice of the peace, a full and satisfactory account of, and paid, all such sums as aforesaid, by him collected during the time he was collector; and shall also have given in to the commissioners of the treasury, an account of all monies received by him, which are, or shall become, due to the state by virtue of any tax act, and the reasonable charges of such commitment.—(c.)

XXVI. It shall be the duty of every tax collector throughout the state, annually to make out a duplicate of the general return, which he is by law directed to make to the treasurer, and to enclose the same, together with the duplicate of the tax return directed to be taken from individuals of their respective collection districts, in a packet, directed to the comptroller and sealed; which packet every tax collector shall transmit to

(d)—1788, P. L. p. 473, and Sess. Acts, 1812, p. 12. (e)—1803, 2d Faust, p. 487. (a)—1812, Sess. Acts, p. 12. (c)—1788, P. L. p. 438.

the treasurers, respectively, on, or before, the first day of October, in every year, that the comptroller-general may thereby enabled to detect any improper conduct in the tax collectors; and should any of the tax collectors fail to perform the duties hereby required, he shall forfeit and pay the sum of one hundred dollars, to be recovered by any person suing for the same in any court having competent jurisdiction.—(d.)

**XXVII.** The commissioners of the treasury, or either of them, shall issue executions against all assessors, and collectors of taxes, and all other persons in arrears for taxes, if the same shall not be paid on, or before, the time appointed for the payment thereof; and shall prosecute all persons whomsoever, neglecting or refusing to perform the several matters relating thereto, required by law, for the recovery of the penalties inflicted for such neglect, or refusal: (g) And shall also charge such delinquent tax collector with interest, at the rate of seven per cent, from the time he ought to have made such return and paid such taxes, to the time of settlement.—(h.)

**XXVIII.** The treasurers shall draw orders on the tax collectors of the districts, respectively, in which any annuitant entitled to public bounty may reside, in his, or her, favor, for the amount, which may be due; and the tax collector, on whom such order is drawn, shall pay out of the public monies, then in his hands, or the first public monies he shall receive, the amount of such order to the drawee only, and not to his, or her, agent, attorney, or assignee; and if such collector, having public money in his hands, shall refuse, or delay, to pay the said order, or should purchase the said annuity, or order, he shall forfeit, and be liable to pay, double the amount, to the person, in whose favor the order was drawn, to be recovered by bill, plaint, or indictment, in any court having competent jurisdiction; wherein no imparlance, or dilatory plea, shall be allowed; and the offender shall, on conviction thereof, be committed to close confinement until the same shall be paid.—(m.)

**XXIX.** The treasurer, on receiving any money from a tax collector, or any other person, or assessor, of this state, shall give him therefor, two receipts, one of which, it shall be the duty of the tax collector, or other person, or assessor, forthwith to transmit, in the safest and most expeditious manner, or by post, to the comptroller; and in case any tax collector, or other public officer, shall refuse or neglect to do the same, he shall forfeit and pay a sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by due course of law.—(n.)

**XXX.** It shall be the duty of the treasurers to report to the house, at their annual session, every instance of default, in any

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(d)—1788, 2d Faust, p. 489. (g)—1788, P. L. p. 439. (h)—1816, Gen. Acts, p. 6. (m)—1799, 2d Faust, p. 312. (n)—1801, Ibid. p. 424.

tax collector in his division, and to instruct the attorney-general and solicitors, respectively, to prosecute such defaulters, as soon as any instance of default shall occur; and it shall be the duty of the said treasurers, respectively, strictly to enforce the means which they are authorized to make use of, to compel the tax collectors duly to perform their duties; and any treasurer failing to make use of such means, shall be liable to make good any loss which the state shall thereby sustain.—(n.)

XXXI. The comptroller shall have power, during the recess of the legislature, to suspend from office any tax collector who shall wilfully neglect, or refuse, to perform the duties of his office. Provided that such suspension shall be previously approved of by the governor for the time being, who shall be authorized to substitute and appoint a fit and proper person to execute the office of the person so suspended, during the recess of the legislature.—(a.)

XXXII. In case any enquirer, assessor, and collector, shall happen to die, refuse to act, depart this state, or remove out of the parish, or district, for which he was appointed, before he shall have qualified, as the law directs, the governor, or commander in chief, for the time being, shall have power, from time to time, to nominate and appoint, one, or more, fit persons, in the room of him, or them, so dying, refusing to act, departing this state, or removing out of the parish, or district; and the person, or persons, so appointed, shall have the same powers, and be under the same penalties, as enquirers and collectors appointed by the legislature.—(b.)

XXXIII. The several enquirers and collectors, shall be liable to be prosecuted on behalf of the state, for all losses and damages that may be sustained by any omission, or breach, of duty; and all penalties, unless otherwise directed, may be sued for by any person, or persons, whomsoever, and when recovered, shall go, one half to the use of the state, and the other half to the persons suing for the same.—(c.)

XXXIV. If any collector, or other person, shall be sued for any thing done under the authority of this act, and judgment be given for the defendant, or the plaintiff suffer a nonsuit, or discontinue his action, such defendant shall recover triple costs of suit.—(c.)

XXXV. It shall be the duty of every tax collector to make a duplicate return to the comptroller-general, of the amount of poor tax by him collected and paid to the commissioners of the poor.—(q.)

(n)—1802, 2d Faust, p. 490. (o)—1801, Ibid. p. 423. (b)—1798, P. L. B., 439. (c)—Ibid. p. 440. (q)—1812, Sess. Acts, p. 12.

## TREASURY.

EACH treasurer shall, before he enters upon any duty of his office, enter into bond, with one, or more, sufficient sureties, to be approved by the governor, or commander in chief, for the time being, payable to the state, and conditioned for the faithful discharge of the several duties of his office; the bond to be given by the treasurer in Charleston, and his sureties, shall be joint and several, and in the penalty of sixty thousand dollars; and the bond to be given by the treasurer in Columbia, and his sureties, shall also be joint and several, and shall be in the penalty of thirty thousand dollars; and the bonds so given shall be deposited in the office of the secretary of state, where to remain of record, subject to the order of the legislature.—(a.)

II. It shall be the duty of the treasurers, respectively, at the end of every month, to report to the comptroller, an accurate statement of the cash transactions of the treasury, of every description; which statement shall contain the amount of every sum of money, which he may receive, or pay away, in behalf of the state, particularizing the person, and his office, of whom he receives and to whom he pays, and on what account he has received, and for what purpose he has paid such sums; and the said treasurers shall, at all times, when required thereto, by the comptroller, produce to him satisfactory statements of the cash on hand, and furnish him promptly, with official information, duly certified, relative to any matter connected with the revenue and finances of this state, within their respective departments.—(b.)

III. It shall not be lawful for the treasurers to keep any account current between their offices; but each shall be separately liable and accountable for the transactions in his office only.—(c.)

IV. The treasurers of this state shall, weekly, or monthly, deposit, for safe keeping, the public monies, which they may, respectively, receive, in the Bank of the State of South-Carolina only; and on failure thereof, or on any treasurer's depositing public monies in any other bank, such treasurer shall forfeit, for such offence, the sum of one thousand dollars.—(d.)

V. The treasurers shall not draw any order in favor of any annuitant, until he, or she, shall have produced, or caused to be produced, a certificate signed by one member of the legislature and two magistrates, that the person, in whose favor the order is to be drawn, is still living, and stating in what district he, or she, resides.—(e.)

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(a)—1799, 2d Faust, p. 252. (b)—Ibid. p. 424, 427, 496. (c)—Ibid. p. 428. (d)—1812, Sess. Acts, p. 56. (e)—2d Faust, p. 315.

VI. The treasurers shall not draw any order, or check, or make any draft on any tax-collector in this state, in favor of any person having a claim or demand on the treasury of this state, except annuitants; nor shall the treasurers make payment to any person, except at the treasury office at Charleston, or Columbia.—(h.)

VII. The treasurers, respectively, and comptroller, shall keep open, and attend in, their offices, from nine o'clock in the morning until two in the afternoon, on every day, (Sundays, the fourth of July, and Christmas day, and the two succeeding days, excepted.)—(m.)

VIII. The salaries of all the public officers on the civil list shall be paid quarterly, and not earlier.—(n.)

IX. The treasurers shall, severally, open an account in their books for every appropriation of money made by the legislature; so that all such payments made by them may appear clearly specified and defined in their books.—(n.)

X. The treasurers shall open, in their respective books, an account in the name of the state of South-Carolina, in which they shall enter the amount of all sums in the treasury unappropriated; which sums shall be under the superintendance of the comptroller, to be applied at such times, and in such manner, for the payment of salaries of public officers, as he and the standing committee of the legislature, shall think fit, by drafts to be made by the comptroller on the treasury.—(a.)

XI. It shall be the duty of the treasurers to report to the legislature at their annual session, every instance of default in the tax-collectors in their respective divisions, and to state, particularly, the means which they may have made use of against such defaulters; and it shall be the indispensable duty of the treasurers, respectively, to enforce all legal means against delinquent collectors: in failure whereof, they shall be liable to make good, respectively, any loss which the state may sustain thereby, and to be deemed guilty of a violation of their duty.—(a.)

### USES AND TRUSTS.

WHERE any person, or persons, shall be seized of any lands, tenements, or hereditaments, to the use of, or in trust for, any other person, or persons, or body politic, by reason of any bar-

(b)—1812, 2d Faust, p. 489. (m)—Ibid. p. 498. (n)—Ibid. pp. 437-497.  
(a)—1803, Ibid. p. 497.

## USES AND TRUSTS.

gain, sale, covenant, contract, agreement, will, or otherwise, the person, or persons, to whose use, or for whose benefit, such lands, tenements, or hereditaments, shall be helden in trust, as aforesaid, shall be deemed and adjudged to be in lawful seizin, estate, and possession, of the said lands, tenements, and hereditaments, with their appurtenances, to all intents, constructions, and purposes, whatsoever, after such quality, manner, form, and condition, as they had in such use.—(d.)

II. Where any person shall stand seized of any lands, tenements, or hereditaments, in fee simple, or otherwise, to the intent that some other person shall have and receive an annual rent out of the same, the person entitled to such rent shall be adjudged to be in possession thereof, and may lawfully distrain for non payment of the said rent; and have all other suits, remedies, and entries, therefor, as if the said rent had been actually granted to him with sufficient clauses of distress, re-entry, or otherwise, according to the conditions limited and appointed upon the trust, for the payment or security of such rent.—(d.)

III. All persons, and bodies politic, who shall have any such estate executed unto them, in any lands, tenements, or hereditaments, shall have the same advantage and benefit, by action, entry, or otherwise, as the persons seized to their use might have had, for any waste, disseizin, trespass, condition broken, or other cause whatsoever, touching the said lands and tenements.—(d.)

IV. Where any estate shall, by marriage, or other settlement, be limited in remainder, to, or to the use of any child, or children, of any person lawfully to be begotten, with any remainder, or remainders, over, to, or to the use of, any other person, or persons, such child, or children, to whom such remainder shall be first limited, as aforesaid, although born after the decease of his, her, or their, parent, on whose death such remainder shall be limited, shall, by virtue of such settlement, take such estate in the same manner, as if he, or they, had been born in the lifetime of the parent, notwithstanding there shall be no trustee to preserve the contingent remainder to such after born child, or children.—(g.)

V. In every case of a trust-estate, where the person, or persons, entitled to the use of any property, or estate, vested in trust, being of age, or his, her, or their, guardian, if under age, may be willing to have other trustees substituted in the room of those, in whom the legal estate is vested, or to have any one, or more, trustees substituted in the room of any one, or more, of the first or former trustees, it shall be the duty of the court of equity to permit such one, or more, of the first or former trustees, to surrender his, her, or their, trust, and to appoint such

(d)—1712, P. L. pp. 50-51. (g)—Ibid p. 91.

One, or more, trustees in his, her, or their, room, as to the said court may appear proper and adviseable: and the trustee, or trustees, so substituted, shall be considered, to all intents and purposes, as vested completely and absolutely, with all the estate, right, title, interest, powers, privileges, and authority, and solvable to all the conditions, terms, and restrictions, as the trustee, or trustees, in whose room or stead he, she, or they, may be so appointed or substituted, were vested with, or liable to: and the first or former trustee, or trustees, shall be therefrom completely exonerated and discharged: Provided always, that a certificate of such appointment, or substitution, shall be endorsed by the register, or commissioner, in equity, upon the original trust deed, if the trust be created by deed, and the deed can be found, and that such certificate be annexed to the original will, if the trust be created by will, and be lodged therewith in the office, where the will may be lodged, and that such certificate shall also be recorded in the secretary's office, or other office, wherever the deed, or will, may be recorded, or lodged; or ought to be recorded, or lodged.—(h.)

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## VAGRANTS.

ALL persons wandering from place to place, without any known residence, or residing in any city, parish, or district, and having no visible and known means of gaining a fair, honest, and reputable livelihood; all suspicious persons going about the country swapping and bartering horses, or negroes, without producing, each, a certificate of his good character, signed by three justices of the peace of the parish, or district, from which such person is last come; all persons, who acquire a livelihood by gambling, or horse racing, without any other visible means of gaining a livelihood, [or that shall keep, or exhibit, either of the gaming tables, commonly called A. B. C. or E. O. or any other table distinguished and known by any other letters, or by any figures, or rowly powly, or rouge and noir, or faro bank, or any other table or bank of the same, or the like kind, under any other denomination whatsoever (o);] all persons, who lead idle and disorderly lives; all, who knowingly harbor horse thieves and felons, and those, who are known to be of that character and description; all persons not following some handicraft trade, or profession, or not having any known and visible means of livelihood, who shall be able to work, and

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(h)—1796, 2d Faust, p. 96. (o)—1802, Ibid. p. 448.

## VAGRANTS.

occupying, or being in possession of, some piece of land, shall not cultivate such a quantity thereof, as shall be deemed by one magistrate and four freeholders, or a majority of them, on oath, to be necessary for the maintenance of himself and his family; all persons representing publicly for gain, or reward, any play, comedy, tragedy, interlude, or farce, or other entertainment of the stage, or any part therein; and all fortune tellers for fee, or reward, all sturdy beggars, and all unlicensed pedlars, shall be deemed vagrants, and liable to the penalties of this act.—(d.)

II. Upon the deposition, on oath, or solemn affirmation, of any credible informer before a magistrate, of any person's being, to the best of his, or her, knowledge and belief, a vagrant according to this act, and liable to the penalties thereof, such magistrate shall issue his warrant, ordering some constable to bring the offender before him, and shall then summon the nearest justice of the peace to join and assist him in inquiring into the truth of the information. And, to prevent any injustice or oppression, no determination shall be good and legal, unless there shall be also summoned three disinterested freeholders, who shall join the two magistrates in the inquiry; and then the opinion of any three out of the five shall be binding and conclusive, and not otherwise: Provided, that if no magistrate shall reside within a convenient distance of the magistrate before whom the offender is carried, then he shall summon five disinterested freeholders; and the opinion and determination of any three of them, joined to that of the magistrate, shall be binding and conclusive.—(d.)

III. Whenever such information, as aforesaid, shall be given, the magistrate shall make out a list of twelve freeholders of the neighborhood, and shall put them into a box, or hat, out of which the person accused shall be allowed to draw three, or five, names, as the case may be, and thereupon the said magistrate shall immediately summon the said freeholders, whose names have been drawn, who shall be liable to a fine of two dollars and ten cents for their non-attendance, unless prevented by sickness; the said fine to be recovered by any magistrate, by warrant and distress; but if any of the said freeholders shall fail to attend, then the magistrate shall direct the person accused to draw out as many other names as will make up the deficiency, so that the attendance of three, or five, freeholders, as the case may be, may be procured: Provided that, if the person accused shall refuse to draw out the names, as aforesaid, the magistrate, before whom he, or she, is brought, shall forthwith proceed to draw out three, or five, names, in the manner above prescribed.—(d.)

**IV.** As soon as two magistrates and three freeholders, or one magistrate and five freeholders, shall be convened together, they shall proceed to examine into the truth of the charge, and to inquire in what manner, and by what means, the person accused gains his, or her, livelihood, and maintains his, or her, family, and if the quorum of them, as above described, shall adjudge such person liable to the penalties of this act, then, on such person's payment of the accustomed fees, and giving security for his, or her, good behavior, for the space of twelve months ensuing, such person shall be immediately discharged; but on his, or her, inability, or refusal to give such security, it shall be lawful for the magistrate, before whom the complaint was made, to commit him, or her, to gaol till the next meeting of the court of sessions for the district, in which such proceedings shall be had; to the clerk of which court such magistrate shall transmit a fair copy of his proceedings, containing the names of the magistrates and freeholders, before whom such person was tried, with the names of the informer and witnesses, and the evidence they gave; which copy shall be filed, and preserved as a record of the court: And if the court shall not think fit to discharge the offender, the clerk thereof, before the last day of the term, shall make known to the inhabitants, by an advertisement stuck up at the door of the court-house, or gaol, of the district, where such person was apprehended, that the services of the offender will be sold at public sale, on the last day of the court, for a space of time not exceeding one year; and the person so purchasing the services of the said offender, shall receive from the said clerk, a certificate of such purchase; and thereupon the offender shall, during the term aforesaid, be subject to the penalties set forth and contained in the act concerning masters and apprentices; and the person, who purchased his, or her, services, shall be entitled to all the benefits accruing to masters by virtue of the aforesaid act.—(g.)

**V.** If no person shall purchase the services of the said offender, he, or she, shall be liable to receive, not more than thirty-nine lashes, nor less than ten lashes, on the bare back, at the discretion of the court, and adjudged to quit the district within three days: And if the said offender shall, after the time above prescribed, be found within the district, from which he, or she, has been banished, and shall not be provided with a certificate of his, or her, good behavior, from a judge of the court of sessions, or cannot procure good security for his, or her, future good behavior, then such person shall be liable to the same penalties and punishments, as above set forth: Provided, that in all cases, where it shall be deemed practicable and expedient by the court, to condemn the offender to hard labor, then such

(g)—1787, P. L. p. 432.

## VENDUES.

offender shall be sentenced to hard labor for a term not exceeding one year, and shall not receive the punishment by whipping, as aforesaid.—(g.)

**VI.** Every person of suspicious character, coming to settle in any parish, or district, in this state, shall be deemed a vagrant, unless he produce a certificate from the justices of the county court, or three justices of the peace of the parish, (or district\*) in which he last resided, setting forth that he is a person of fair character, and not an idle, or disorderly person; or unless he obtain within the space of five days, sufficient security for his good behavior for twelve months ensuing.—(g.)

**VII.** If any magistrate shall fail, or neglect, to execute any of the duties herein prescribed, he shall be liable to pay forty-two dollars and eighty five cents; and every constable neglecting his duty, as aforesaid, shall be liable to pay twenty-one dollars and forty cents, to be recovered in the court of sessions; one moiety to go to the informer, and the other to the use of the district where the offence shall have been committed and tried.—(g.)

**VIII.** If any informer shall be convicted, before the court of sessions, of having preferred his complaint through malevolence, or spite, without any just grounds of accusation, he shall be adjudged to pay a fine of twenty-one dollars and forty-three cents to the party injured, besides being liable to an action for damages; and if any person shall wantonly prosecute any magistrate, or constable, for a neglect of duty, and shall fail in his proof of such neglect, he shall pay a fine of twenty-one dollars and forty-three cents, to be recovered as aforesaid.—(g.)

## VENDUES.

The city council of Charleston shall be authorized to levy and impose any duty, or tax, they may think fit and proper, on slaves at vendue, within the corporate limits of the said city: Provided nevertheless, that nothing herein contained, shall be construed, to authorize the imposition of any duty on sales made of the property of persons deceased, of insolvent debtors, or of incorporate societies, or which shall be sold under the order of any court of justice of this state.—(a.)

**IX.** Auctioneers shall be authorized to recover, in the most summary way, before the court of warden's, or any other

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(g)—1787, P. L. p. 432. \*—words in parentheses not in original. (a)—1809, Sess. Acts, p. 16 and P. L. p. 419.

court of record in this state, the amount of their cash sales from the purchasers, and the amount of the commissions from the former proprietors, for property sold on credit.—(b.)

III. Every person, who shall purchase any lands, slaves, houses, cattle, ships, boats, or other vessels, goods, wares and merchandize, at any public sale in this state, which purchase shall be entered in the books of the vendue master so selling such property, refusing to comply with the conditions of such sale, within seven days thereafter, shall be liable to all losses arising thereon to the original owner: And for the more speedy ascertaining of such losses, the vendue master shall be authorized to re-sell such lands, slaves, houses, horses, cattle, ships, boats, or other vessels, goods, wares and merchandize, on the original conditions, giving seven days' notice of said sale; and whatever deficiency shall arise on said purchaser's non-compliance, the vendue master shall recover, at the first ensuing court, having jurisdiction, such loss from every person so declining to comply with the conditions of the original purchase, together with the commissions and other expenses attending the sale; And in order that the said deficiency and expenses may be recovered from the defaulter, with the least possible delay, the justices of the court of common pleas shall be empowered to make such summary rules and orders, in all causes relative to the recovery of the said deficiencies and expenses, as shall be agreeable to justice, and may tend to expedite such causes, notwithstanding the writ, or other process, shall, or may, be made returnable at any day that is to come after the time appointed for the holding of a court, for the trial of all such causes as aforesaid, and no judgment given in any such case shall be arrested, or staid, for; or by reason of any error, or mistake, in the proceedings: Provided that all persons, who are parties to any such cause, or suit, have due and convenient notice of such rules and orders, as aforesaid, and have reasonable and convenient time allowed them to do and transact all matters that are necessary and allowable by law, to defend their respective suits.—(c.)

IV. The owners of property placed in the hands of vendue-masters, or auctioneers, shall be authorized to recover from said vendue-masters, in the most summary manner, before the Inferior Court of Charleston, or any court having competent jurisdiction, in this state, all sums of money due them by the said vendue-masters, or auctioneers, for goods, or other property, by them sold, on account of said owners: And in order that the said debts may be recovered with the least possible delay, the justices of the court of common pleas shall be authorized to make such summary rules and orders, in all cases relative to the recovery of

(b)—P. L. p. 364. (c)—Ibid. p. 363.

**VESSELS.**

the said debts and costs, as shall be agreeable to justice, and may tend to expedite such causes, notwithstanding the writ, or process, may be returnable on any day, that is to come, after the time appointed for holding court, for the trial of such causes. And no judgment given in such cases, shall be arrested, or stayed, for, or by reason of, any error, or mistake, in the proceedings: Provided, that all persons, who are parties to any such causes, or suits, have due and convenient notice of such rules and orders, and have reasonable and convenient time allowed them, to do and transact all matters that are necessary, and allowable by law, to defend his, or their, respective suits.—(d.)

V. No vendue-master, or auctioneer, shall be entitled to the benefit of the act made and provided for the relief of insolvent debtors, or the act, entitled "an act to establish the bounds of of the prisons and common gaols in the several districts and counties of the state," in such cases, where his debt, or debts, arose from not paying to the owner, or owners, who shall have placed property in his hands, for sale, the proceeds of property so disposed of: Provided however, that nothing in this act shall be so construed, or understood, as to render vendue-masters, or auctioneers, responsible for the loss of goods, or other property, occasioned by the act of a public enemy, the act of God, or by any other cause, which man could not prevent, or foresee: And provided also, that the sheriff, into whose custody such vendue-master, or auctioneer, shall be committed, shall give ten days' notice to the creditor, or creditors, at whose suit he shall be confined, that unless the said creditor, or creditors, shall give security to the said sheriff, for the support of the said debtor, while in gaol, he will be discharged, and, on failure so to do, may be discharged accordingly.—(e.)

**VESSELS.**

EVERY person who shall carry away any schooner, or periaugua, committed to his care and management, fraudulently, or with intention to steal, or deprive the owner of the property of the same, from any part of this state, to any other part thereof, or elsewhere, whereby the owner, or owners, of such schooner, or periaugua, shall be deprived of them, or any of them, or of the use and benefit thereof, shall be adjudged guilty of felony; and being thereof lawfully convicted, or being indicted thereof, shall stand mute, or not directly answer to the indictment, or

will peremptorily challenge above the number of twenty of the jury, shall suffer death as a felon, and be excluded from the benefit of clergy.—(a.)

II. If any person shall plunder, steal, take away, or destroy, any goods, or merchandize, or other effects, from any ship, or vessel, belonging to any prince, or state, or to any private subject, or citizen, of any foreign nation in alliance, or neutrality with the United States, or belonging to any citizen of this, or any of the United States, which shall be in distress, or which shall be wrecked, lost, stranded, or cast on shore in any part of this state, whether any living creature be on board such vessel or not, or shall make a hole in the bottom of any ship, or vessel, in distress, or shall take away a pump, or wilfully, and unlawfully do any mischief tending to the loss of any ship, or vessel; or shall take away any of her furniture, tackle, apparel, provision, or part of such ship, or vessel, such person so offending shall be deemed guilty of felony, and suffer death without the benefit of clergy: Provided, that where goods, or effects, of small value, that may be stranded, shall be stolen, without circumstances of outrage, or violence, the offender shall forfeit and pay triple the value, to be ascertained by two justices of the peace.—(b.)

III. It shall be lawful for any justice of the peace, on information, upon oath, of any part of the cargo, or effects, of any vessel lost, or stranded, on, or near, the sea coast, being unlawfully conveyed away and concealed, or of some cause of reasonable suspicion thereof, to issue his warrant for searching for such goods, or effects, as in cases of stolen goods; and if the same be found in any house, or other place, or in the possession of any person, not legally authorized to have the same, and the person, in whose possession the same shall be found, shall not, immediately, upon demand, deliver the same to the owner, or person lawfully authorized to receive them, he, or she, shall forfeit and pay to the owner, or owners, of such goods, his, or their, agent, or attorney, triple the value, for such refusal. And any person discovering where any such goods are wrongfully bought, sold, or concealed, so that the owner, his agent, or attorney, shall regain them, shall be entitled to a reasonable salvage, not exceeding twenty-five per cent. on the value, to be adjudged by the nearest justice of the peace, who shall adjust the same.—(b.)

IV. If any person shall offer, or expose to sale, any goods, or effects, whatsoever, belonging to any ship, or vessel, lost, stranded, or cast on shore, as aforesaid, and unlawfully taken away, or reasonably suspected to have been so, it shall be lawful for the person, or persons, to whom the same shall be so

(a)—1754, P. L. p. 236. (b)—1783, Ibid. p. 320.

## VESSELS.

offered for sale, or any justice of the peace, or officer of the militia, to stop and seize the said goods and effects; and if the person, who shall have offered the same for sale, or some other person, in his, or her, behalf, shall not, within ten days next, after such seizure, make out, to the satisfaction of such justice of the peace, that he, or she, became honestly possessed of them, then the said goods and effects shall, by order of the said justice, be forthwith delivered to the owner thereof, on proof of his, or her, claim, and the payment of a reasonable reward, not exceeding five per cent. on the value, for such seizure, to be ascertained by the said justice, to the person, who shall seize the same: and he, she, or they, who offered such goods, or effects, for sale, as aforesaid, shall forfeit and pay to the owner, or owners, twice the value of such goods, to be recovered by action at law.—(b.)

V. If any master, or other person, having charge of any ship, or other vessel, shall bring into this state any convicted malefactor, or person ordered for transportation for any crime, or offence whatever, from any foreign country, state, or dominion, the ship, or vessel, bringing such person, shall be obliged to leave the port, in which she shall arrive, within ten days after her arrival, and shall not be permitted to take, or receive on board, any loading whatsoever, on pain of forfeiting such ship, or vessel: and if any master shall land, or suffer to be landed, or dispose of the time, or service, of such person, for the payment of his passage, or any other claim, or demand, such master of vessel, or other person, having charge thereof, shall forfeit and pay, for every convicted malefactor, or person ordered for transportation, so brought, or offered to be disposed of, the sum of two thousand one hundred and forty-three dollars; one moiety thereof to go to the state, and the other to the person, who will inform, or sue for the same, to be recovered by action of debt, bill, plaint, or indictment; in which action, &c. the person offending shall be compelled to give security, and in default of payment, shall suffer twelve months' close imprisonment.—(g.)

VI. All masters of vessels, and others, lodging seamen in the gaols of this state for desertion, shall, previously thereto, give bond, with security, to the sheriff of the district, to be by him approved, in the sum of five hundred dollars, for every seaman so lodged, with a condition that he, or they, shall be bound to take away the said seaman, or seamen, from the said gaol, and pay the expenses thereof.—(h.)

VII. No vessel coming into any harbor, or port, in this state, shall be suffered to pass the respective forts, or places appointed for the examination of vessels coming into this state, nor shall

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(b)—1783, P. L. p. 320. (g)—1788, Ibid. p. 464. (h)—1808, Sess. Acts, p. 63.

Any person be suffered to land from such vessel, before it shall be examined by some person to be appointed for that purpose, in manner, as hereinafter mentioned; and every pilot, or other person, who shall bring, or attempt to bring, into any port of this state, any vessel, or the whole, or any part of the crew, beyond the places appointed for her examination, as aforesaid, without being so examined, shall forfeit and pay, one half to the use of the state, and the other half to the use of such person as shall sue for the same, a sum not less than one hundred, nor more than two thousand dollars; and every pilot so offending, shall moreover be deprived of his branch, as a pilot.—(m.)

VIII. The commanding officers of the forts within the different harbors of this state, appointed by the legislature, or executive, for bringing vessels to for examination, or persons appointed for the examination of such vessels, shall, before any vessel shall be permitted to pass such place, where they are to be examined, cause the captain, or commanding officer, of every such vessel, to declare on oath, respecting the state and condition of such vessel, and the health of the place, from whence she came, and of the health and condition of the crew of every such vessel, as well at the time of leaving her last port, as at the time of examination, before she shall be permitted to proceed into any such port within this state; and if any commander of any such fort, or any person so to be appointed, for the examination of any such vessel, or crew, as aforesaid, shall, upon such examination, apprehend, or have reason to believe, that the plague, or any infectious distemper, except the small-pox, shall be on board any such vessel, or that the crew are infected with the same, or that the place, from whence she last came, was infected with any such malignant disorder, the said commanding officer of such fort, or person appointed to examine such vessel, and her crew, shall immediately stop such vessel from proceeding further into port, and prevent any of her crew from landing, until the pleasure of the governor, or commander in chief of this state, or, in his absence from the city of Charleston, of the intendant and wardens of the said city, or the pleasure of the commissioners of streets in Beaufort, or Georgetown, as the case may be, shall be known; who shall thereupon, cause such vessel and her crew to be examined by an experienced physician, or two; and if deemed necessary, shall cause such vessel, and her crew, to perform such quarantine, as shall be deemed by the said governor and commander in chief, intendant and wardens, or commissioners of streets, respectively, most proper and requisite to prevent, or check, any such distemper from spreading in this state.—(p.)

(m)—1784, P. L. p. 341—and Sess. Acts, 1809, p. 47. (n)—1784, P. L. p. 341, and 2d Faust, p. 98.

## VESSELS.

**IX.** Every vessel and crew, which shall be ordered to perform quarantine in this state, shall, from time to time, during such quarantine, obey all and every order respecting the victualling, purifying, and cleansing, of such vessel, and the intercourse of her crew with the inhabitants of this state, or the landing of her crew; and such quarantine, as shall be given from time to time by the governor, or commander in chief, intendant, and wardens, or commissioners of streets, as the case may be, in writing: and every person, who shall offend, or disobey such order, shall, for every such offence, be subject to a fine of not less than one hundred, nor more than two thousand dollars, to be recovered in any court of record in this state, one half to the use of the state, and the other half to such person as shall sue for the same.—(a.)

**X.** If any person shall go on board, or alongside of any such vessel ordered to perform quarantine, without leave from the governor, or commander in chief, intendant, and wardens, or commissioners of streets, as aforesaid, before such quarantine shall be ended, every such person so offending, shall be obliged to remain on board such vessel, and perform such quarantine, as may be ordered, as aforesaid, and be liable to a fine of not less than one hundred nor more than two thousand dollars, to be recovered for the use of this state, in any court of record within the same.—(a.)

**XI.** When any pilot shall go on board a vessel, that shall be obliged to perform quarantine, the master, or commander of such vessel, shall be obliged to pay to all, and every such pilot, and pilots, his, her, or their, executors, or administrators, the sum of four dollars and sixty-five cents, for each day such pilot shall perform quarantine on board such vessel: Provided always, that, if it be made appear by the oath of two credible witnesses, that such pilot, or pilots, were warned by the commander of the vessel so liable to perform quarantine, before he, or they, entered on board such vessel, that the plague, or any such distemper, for which such vessel may be liable to perform quarantine, was on board such vessel, or in her crew, or that such pilot, or pilots, omitted to inquire concerning the health of such vessel, or her crew, in such case, such pilot, or pilots, shall not be entitled to receive any recompence for any quarantine he, or they, may be obliged to perform on board such vessel.—(c)

**XII.** No vessel whatever, coming into this state from any port of the Mediterranean sea, or the Levant, or any other place, where the plague is frequent, or apt to prevail, shall be suffered to pass the places appointed for the examination of vessels coming into any port of this state, where the captain, or

(a)—1784, P. L. p. 342—see also 2d Faust, p. 98, and Seas. Acts, 1809, p. 47.

(c)—1784, P. L. p. 342.

Commanding officer, of such vessel, does not produce, on oath, well authenticated, to the person, or persons, appointed to examine such vessel, and from the proper persons empowered to give the same, from the port, from whence such vessel last came, a proper bill of health, setting forth the number of persons on board such vessel, and the state and condition of health they were in, at the time of leaving such port; but every such vessel, and her crew, so coming from the Mediterranean, or the Levant, or other place, where the plague is frequent, or apt to prevail, as aforesaid, shall be ordered by the governor, or commander in chief of this state, or, in his absence from the city of Charleston, by the intendant and wardens of the said city, or by the commissioners of streets in Beaufort, or Georgetown, as the case may require, either to depart this state, or to perform such quarantine as he, or they, shall deem most proper, and consistent with the health and safety of the inhabitants of this state: and no vessel, coming from any of the aforesaid places, shall be suffered to pass the places appointed for examination, as aforesaid, until a particular report be made by the person appointed to examine such vessel, to the proper authority: but in all cases of vessels coming from such places, producing a proper bill of health, and being examined, as hereinbefore directed, such vessels, respectively, shall be admitted to an entry, or obliged to perform quarantine for such time only, as the governor, intendant, and wardens, or commissioners of streets, as the case may be, shall limit and direct.—(d.)

XIII. Every commander of a vessel coming into this state, who shall give a false bill of health, and every doctor examining any such vessel by order of the governor, or commander in chief, or in his absence, of the intendant and wardens of the city of Charleston, for the port of Charleston, or of the commissioners of streets of Beaufort, and Georgetown, respectively, as aforesaid, who shall wilfully give a false certificate of the health of such vessel, or her crew, shall forfeit and pay a sum not less than one hundred dollars, nor more than two thousand dollars; one half to the use of the state, and the other half to the person informing and suing for the same; and no imprance shall be allowed to any person sued for any of the forfeitures aforesaid.—(g.)

XIV. On all occasions, when the governor, or commander in chief, shall deem it necessary, he shall, at the expense of the state, hire and employ boats, and small craft, and a sufficient number of able men, well armed, to be stationed wherever he may think fit, and to act under his directions; in order to enforce obedience to the quarantine laws, and also to arm such men, if requisite, with fire-arms belonging to the state.—(h.)

-(d)—1784, P. L. pp. 342 and 362. (g)—P. L. p. 343, 2d Page, p. 98, and Sess. Act, 1809, p. 47. (h)—1797, 2d Faust, p. 156.

XV. The officers, who may be entrusted with the execution of the quarantine laws, shall, in case of a violation, or an attempt to violate any of the said laws, be authorized to board, by force of arms, any vessel used in such violation, or attempt to violate, and to detain her, and her crew, and passengers: and any vessel restrained under quarantine law, which shall attempt to violate the same, may be fired upon, and detained by force of arms.—(m.)

XVI. The penalty for a breach of any of the quarantine laws shall not be less than one hundred dollars, nor more than two thousand dollars.—(m.)

XVII. The salary heretofore allowed to the keeper of the Lazaretto, shall be discontinued, and in lieu thereof, the sum of one thousand dollars paid to the city council of Charleston, to be applied by them in any manner they may deem expedient, for the accomplishment of the objects of the quarantine laws.—(n.)

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### WASTE.

If any tenant for term of life, or years, shall commit waste, during such estate, or term, of the houses, woods, or any other thing belonging to the tenements so holden, without special licence, in writing, so to do, such tenant shall be subject to an action of waste, and be liable to yield full damages to the party grieved; and shall moreover be punished by amercement grievously.—(n.)

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### LAST WILLS AND TESTAMENTS.

Any person having right, or title, to any lands, tenements, or hereditaments, whatsoever, (femes covert, persons of unsound mind, and infants, excepted) may dispose thereof by will, to be signed by the person devising the same, or some other person in his presence, and by his express direction, and attested and subscribed by three credible witnesses, in the presence of the said devisor; and no devise in writing, of any lands, tenements, or hereditaments, nor any clause thereof, shall be revocable but

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(m)—1809, Sess. Acts, p. 47. (n)—1817, Ibid. p. 58. (n)—1712, P. L. p. 57.

by some other will, or codicil, in writing, or other writing, declaring the same, attested and subscribed by three witnesses, as aforesaid, or by destroying, or obliterating, the same, by the testator himself, or some other person, in his presence, and by his direction and consent.—(a.)

II. If any will, in writing, shall contain devises of real estate, and also legacies of goods and chattels, and such will cannot be proved, so as to pass the real estate, the same shall not, for that cause, be void as to the bequests of the goods and chattels.—(a.)

III. If no provision shall be made by the will of any testator, for a child, or children, that may be born after his death; such child, or children, shall be entitled to an equal share of all the real and personal estate given to the other child, or children, who shall contribute, to make up such share, or shares, according to their respective interests, or portions, derived to them under such will.—(a.)

IV. Any child, or children, born after the making and executing of any last will and testament, but previous to the decease of the testator, shall be provided for in the same manner, as posthumous children are provided for.—(b.)

V. If any child shall die in the lifetime of the father, or mother, leaving issue, any legacy given in the last will of such father, or mother, shall go to such issue, unless such deceased child was equally portioned with the other children, by the father, or mother, when living.—(c.)

VI. If any person making a will, shall afterwards marry and die, leaving issue, it shall be deemed and taken to be a revocation of such will to all intents and purposes.—(c.)

VII. No will, in writing, concerning any goods and chattels, shall be repealed, nor any clause, devise, or bequest, therein, be altered, or changed, by any words, or will, by word of mouth only, unless the same be, in the lifetime of the testator, committed to writing, and afterwards read to, and allowed by, him, and proved, to be so done, by three witnesses, at least. Provided, that any soldier in actual military service, or any mariner, or seaman, being at sea, may dispose of his personal estate, as heretofore.—(d.)

VIII. A widow may bequeath, by will, the crop, or crops, standing, or growing, on the grounds of her dower, or on other lands, planted for her use; and a parson may, by will, bequeath the crop, or crops, growing, or standing, on his glebe land.—(g.)

IX. Any estate pur autre vie, shall be devisable by a will in writing, signed by the party devising the same, or by some

(a)—1789, P. L. p. 491. (b)—1808, Dec. 15, Sess. Acts, p. 59. (c)—1789, P. L. p. 492. (d)—Ibid. 491. (g)—1734, Ibid. p. 109.

other person, in his presence, and by his express directions, attested and subscribed, in the presence of the devisor, by three, or more, witnesses: And if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors, or administrators, of the party, that had the estate thereof, by virtue of the grant, and shall be assets, in their hands.—(e.)

X. If any person having possession of the will of a deceased person, shall neglect to produce the same to be proved, process, as for contempt, shall issue from the court, where such will ought to be proved; and such person shall be fined and imprisoned, 'till the will shall be delivered up.—(h.)

XI. No nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of forty-two dollars and eighty-six cents, that is not proved by the oaths of three witnesses at least, who were present at the making thereof, and bidden by the testator to bear witness, that such was his will, or words to that effect; nor unless such will was made in the last sickness of the deceased, in the house, or place, where he, or she, had died; nor shall testimony be admitted to prove any nuncupative will, if six months shall have elapsed after the speaking of the pretended testamentary words, unless such testimony, or the substance thereof, were committed to writing, within six days after the making the said will; and the same shall not, at any time, be received to be proved, unless process shall have first issued, to call in the widow, or next of kindred to the deceased, to the end, that they may contest the same, if they please.—(m.)

XII. If the testator shall have a mansion-house, or known place of residence, his, or her, will, shall be proved in the court of ordinary of the district, where such house is, or place of residence was, but if the testator had no such place of residence, and lands are devised in the will, it shall be proved before the ordinary of the district, where the lands lie; and where there are lands in several districts, if the testator had no such place of residence, and there are no lands devised, the will shall be proved, either in the district, where such testator died, or where the whole, or greatest part of his, or her, estate shall be.—(m.)

XIII. No letters testamentary, nor probate of any nuncupative will, shall pass the seal of court, 'till fourteen days, at the least, after the decease of the testator be fully elapsed.—(p.)

(e)—1712, P. L. p. 83. When an estate pur autre vie (for the life of another person) is granted to a man and his heirs, and the grantee dies, during the life of cestui que vie, (the person for whose life the estate is granted) the heirs may enter and hold possession, and is called in her, a special occupant. 2 Bl. Com. 259. In this state all a man's children, &c constitute but one heir.  
(h)—1789, P. L. p. 622. (m)—Ibid. p. 491. (p)—1712, Ibid. p. 84.

**A COMPENDIOUS SYSTEM  
OF THE  
GENERAL PRINCIPLES AND DOCTRINES  
OF THE  
COMMON LAW.**

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**ACCESSION.**

If any given corporeal substance receive, afterwards, an accession by natural, or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood, or metal, into vessels, or utensils, the original owner of the thing is entitled, by his right of possession, to the property of it, under such its state of improvement; but, if the thing itself, by such operation, be changed into a different species, as by making wine, oil, or bread, out of another's grapes, olives, or wheat, it belongs to the new operator, who is only to make satisfaction to the former proprietor, for the materials, which he has so converted: And it hath ever been held, that if one takes away and clothes another's wife, or son, and afterwards they return home, the garments shall cease to be his property, who provided them, being annexed to the person of the child, or woman.—(a.)

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**ACCESSORY.**

An accessory is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either before, or after, the fact committed. In murder, or felonies, with, or without, the benefit of clergy, there may be accessories; except only, in those offences, which, by judgment of law, are sudden and unpremeditated, as manslaughter and the like; which, therefore, cannot have any accessories before the fact. So to in petit larceny, and all crimes under the degree of petit larceny, and all crimes under the degree of felony, there are no accessories, either before, or after, the fact; but all persons concerned therein, if guilty at all, are principals; the law not descending to distinguish the different shades of guilt in petit misdemeanors.

## ACCESSORY.

An accessory before the fact, is one, who being absent at the time of the crime committed, doth, yet, procure counsel, or command another to commit a crime. Herein absence is necessary to make him an accessory; for, if such procurer, or the like, be present, he is guilty of the crime as principal. If A then, advises B to kill another, and B does it in the absence of A, B is principal, and A is accessory in the murder. And this holds, even though the party killed be not (*in re re in natura*) in existence, at the time of the advice given; as if A advises B, the mother of a bastard child unborno, to strangle it when born, and she does so, A is accessory to this murder. It is also settled, that whosoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact; and he, who, in any wise, commands, or counsels, another to commit an unlawful act, is accessory to all that ensues upon that unlawful fact; but is not accessory to any act distinct from that; as if A command B, to beat C, and B beats him so that he dies, B is guilty of murder, as principal, and A as accessory; but if A commands B to burn C's house, and B, in so doing, commits a robbery, now A, though accessory to the burning, is not accessory to the robbery; for that is a thing of a distinct and un consequential nature. But, if the felony committed be the same in substance, with that, which is commanded, and only varying in some circumstantial matters; as if, upon a command to poison Titius, he is stabbed, or shot, and dies, the commander is accessory to the murder; for the substance of the thing commanded, was the death of Titius, and the manner of its execution was a mere collateral circumstance.

An accessory after the fact, may be, where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon; therefore to make an accessory after the fact, it is requisito, that he knows of the felony committed. And, generally, any assistance whatever, given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assister an accessory; as furnishing him with a horse to enable him to escape his pursuers, money; or victuals, to support him, a house, or other shelter, to conceal him, or open force, or violence, to rescue, or protect him. So likewise to convey instruments to a felon, to enable him to break gaol, or to bribe the gaoler, to let him escape, makes a man accessory to the felony; but to relieve a felon in gaol, with cloaths, or other necessaries, is no offence. And to make the assistant an accessory, the felony must be complete at the time of the assistance given; as if one wound another mortally, and after the wound given, but before death ensues, a person assists, or receives, the delinquent, this does not make him accessory to the homicide; for till death ensues, there is no felony committed.

The general rule as to the treatment of accessories is, that they shall suffer the same punishment as their principals; especially accessories before the fact. (a) If the owner of stolen goods, after complaint made to a justice of the peace, take his goods, and consent to the escape of the felon, or compound the offence, this, it is said, will make him accessory after the fact; but it is otherwise, if before complaint to the justice, the owner retaketh his goods, and suffereth the felon to escape.—(b.)

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## ACCORD

Is a satisfaction agreed upon between the party injuring and the party injured; which, when performed, is a bar of all actions upon this account; as if a man contract to build a house, or deliver a horse, and fail in it, this is an injury, for which the sufferer may have his remedy by action; but if the party injured accepts a sum of money, or other thing, as a satisfaction, this is a redress of that injury, and entirely takes away the action.—(c.)

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## AFFRAY

Is the fighting of two, or more, persons, in some place, to the terror of the people; for, if the fighting be in private, it is no affray, but an assault. Affrays may be suppressed by any private person present, who is justifiable in endeavoring to part the combatants, whatever consequences may ensue. But, more especially the constable, or other similar officer, however denominat'd, is bound to keep the peace; and to that purpose, may break open doors to suppress an affray, or apprehend the affrayers; and may either carry them before a justice, or imprison them by his own authority, for a convenient space, 'till the heat is over; and may then, perhaps, also make them find securities for the peace. The punishment of common affrays is by fine and imprisonment, the measure of which must be regulated by the circumstances of the case; for where there is any material aggravation, the punishment is proportionably increased; as when two persons coolly and deliberately engage in a duel: this being a high contempt of the justice of the nation, is a strong aggravation of the affray, though no mischief has actually ensued. Another aggravation is, when thereby, the officers of justice are disturbed in the due execution of their office;

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(a)—4 Bl. Com. p. 35 to 40. (b)—Jacob's Law Dictionary. (c)—3 Bl. Com. p. 155

**ALIENS.**

or where a respect to the particular place ought to restrain and regulate men's behavior, more than in common ones; as in a court of justice, and the like. And upon the same account also, all affrays in a church, or church-yard, are esteemed very heinous offences, as being indignities to Him, to whose service those places are consecrated.—(a.)

A justice of the peace may commit affrayers, until they find sureties of the peace. A constable may require affrayers to depart, and if they resist, he may call others to his assistance; who, if they refuse to assist him, may be fined and imprisoned: And a private person, or stander by, may put a stop to an affray, and seize the offenders, where persons are assembled in a tumultuous manner to break the peace. In case a person be dangerously wounded, any man may apprehend the offender, and carry him before a justice, in the same manner as a constable. In a very dangerous affray, a constable can justify commitment, 'till the offenders find sureties for the peace. He may likewise put the affrayers in the stocks, 'till he can procure proper assistance to convey them to the gaol. But in cases of affrays, the constable must apprehend the persons offending, before the affray is over, or else, he may not do it without a warrant from a justice, except it be in an extraordinary case; as where a person is wounded dangerously. In case of a sudden affray, through passion, or excess of drinking, the constable may put the person in prison, if there be one in the ville, until the heat of their passion and intemperance is over, though he deliver them afterwards; or until he can bring them before a justice of peace; and that to avoid the present danger. If a constable is hurt in an affray, he may have his remedy by action, and have good damages; but the affrayers, if they are hurt, shall have no remedy: And when any other persons receive harm from the affrayers, they may have remedy by action against them.—(b.)

**ALIENS**

**Aliens** persons born out of the jurisdiction of this state, and of the United States. (c) They are incapable of taking by descent, or inheritance; for they are not allowed to have any inheritable blood in them; nor can they hold any real estate by purchase. Yet, an alien friend, (or one whose country is in

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(a)—4 Bl. Com. p. 145 (b)—Jacob's Law Dictionary. (c)—See 1 Bl. Com. p. 366, and Const. U. States, art. 4, sec. 2.

peace with our's) may acquire a property in goods, money, or other personal estate; or may hire a house for his habitation. He may also trade as freely as other people, and bring an action concerning personal property; and may make a will, and dispose of his personal estate. An alien is subject to the laws of the state so long as he continues within the limits of its jurisdiction.—(c.)

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### ARBITRATION

Is where the parties injuring, and injured, submit all matters in dispute concerning any personal chattels, or personal wrong, to the judgment of two, or more, arbitrators, who are to decide the controversy: and if they do not agree, it is usual to add, that another person be called in as umpire; to whose sole judgment it is then referred: or, frequently, there is only one arbitrator originally appointed. This decision, in any of the cases, is called an award; and, thereby, the question is as fully determined, and the right transferred, or settled, as it could have been by the agreement of the parties, or the judgment of a court of justice. The right of real property cannot thus pass by a mere award; but an arbitrator may award a release, or conveyance of land, and it will be a breach of the arbitration bond to refuse compliance. An award may be set aside for corruption, or other misbehavior in the arbitrators, or umpire.—(a.) The award of arbitrators is definitive, and being chosen by the parties, they are not tied to such formalities of law, as judges in other cases are: but their determination must be certain, and it is to be according to the express condition of the bond, by which the parties submit themselves to their judgment. The chancery will not give relief against the award of the arbitrators, except it be for corruption, &c. and when their award is not strictly binding by the rules of law, the court of equity can decree a performance. Arbitrators are to award what is equal between the parties, and not on one side only; and the performance of it must be lawful and possible; also, the award must be final. Where a thing is to be done on payment of money, a tender of the money is as much as an actual payment. Arbitrament is the sentence, or determination, pronounced by arbitrators, and published when they have heard all parties: and is, either, general, of all actions, demands, quarrels, &c. or special, of some certain matters in controversy: It may be also ab-

(c)—1 Bl. Com. p. 370, &c. (a)—3 Ibid. p. 16.

## ARREST.

solute, or conditional. To every arbitrament, five things are incident. 1st, Matter of controversy. 2d, Submission. 3d, Parties to the submission. 4th, Arbitrators. 5th, Giving up the arbitrament. An arbitrament, that one shall release to another, by advice of a certain person, is good: because it is a reference only for the execution of it. Submissions to arbitration are usually by bond; and the parties, who bind themselves, are obliged to take notice of the award at their peril.—(b.) On a reference to several, an award made by the majority, is a legal award, and a concurrence of the whole is not necessary.—(c.) There can be no doubt that an administrator, or executor, may submit matters of account to arbitration: and where an award is made, in pursuance of such submission, the law implies a promise to pay: not, indeed, that he shall pay out of his own estate, but out of the assets in his hands to be administered, if he has any.—(d.)

## ARREST.

An arrest must be by corporal seizing, or touching the defendant's body; after which, the bailiff may justify breaking open the house, in which he is, to take him: otherwise, he has no such power, but must watch his opportunity to arrest him.—(a.)

In all criminal cases, all persons whatsoever, without distinction, are equally liable to be arrested: but no person is to be arrested without being charged with such a crime as will, at least, justify holding him to bail, when taken. An arrest may be made by warrant, by an officer without warrant, or by a private person also, without warrant. Warrants are, ordinarily, issued by justices of the peace: and a justice of the peace hath power to issue a warrant to apprehend a person accused of felony, though not yet indicted. He may also issue a warrant to apprehend a person suspected of felony, though the original suspicion be not in himself, but in the party, that prays his warrant; because he is a competent judge of the probability offered to him of such suspicion. But, in both cases, it is fitting to examine, upon oath, the party requiring a warrant, as well to ascertain that there is a felony, or other crime, actually committed, (without which no warrant should be granted,) as also to prove the cause and probability of suspecting the party, against

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(b)—Jacob's Law Dictionary. (c)—Lockhart *vs.* Kid, 2 Mill, p. 217.—(d)—*Ibid.* p. 218. Swicard *vs.* Adm'r. of Swicard. (a)—3 Bl. Com. p. 288.

whom the warrant is prayed. The warrant ought to be under the hand and seal of the justice, should set forth the time and place of making, and the cause, for which it is made, and should be directed to the constable, (or it may be to any private person by name,) requiring him to bring the party, either generally, before any justice of the peace of the county, or only before the justice, who granted it: the warrant, in the latter case, being called a special warrant. A general warrant to apprehend all persons suspected, without naming, or particularly describing any person in special, is illegal, and void for its uncertainty: for it is the duty of the magistrate, and ought to be left to the officer, to judge of the grounds of suspicion. When a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends. A warrant from the senior, or other judge of the court of sessions, extends all over the state; but the warrant of a justice of the peace, in one county, or district, as Laurens, must be backed, that is, signed by a justice of the peace in another, as Newberry, before it can be executed there. Arrests, by officers, without warrant, may be executed, 1st, by a justice of the peace, who may, himself, apprehend, or cause to be apprehended, by word only, any person committing a felony, or breach of the peace, in his presence: 2d, the sheriff, and 3d, the coroner, may apprehend any felon within the county, without a warrant: 4th, the constable may, without a warrant, arrest any one, for a breach of the peace, committed in his view, and carry him before a justice of the peace. And in case of felony actually committed, or a dangerous wounding, whereby felony is like to ensue, he may, upon probable suspicion, arrest the felon: and for that purpose is authorized, as upon a justice's warrant, to break open doors, and even to kill the felon, if he cannot otherwise be taken: and if he, or his assistants, be killed in attempting such arrest, it is murder in all concerned. Any private person, (and a fortiori, a peace officer) that is present, when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment, if he escapes through the negligence of the standers-by: and they may justify breaking open doors upon following such felon: and if they kill him, provided he cannot be otherwise taken, it is justifiable; though, if they are killed in endeavoring to make such arrest, it is murder.—(b.) None shall be arrested for debt, trespass, &c. or other cause of action, but by virtue of a precept, or commandment out of some court: but for treason, felony, or breach of the peace, any man may arrest without warrant or precept. If a bailiff be kept off from making an arrest, he shall have an action of assault: and where the person arrested, makes resistance, or assaults the bailiff,

(b)—4 Bl. Com. p. 289.

biff, he may justify beating of him. If a bailiff lays hold of one by the hand, whom he had a warrant to arrest, as he holds it out at the window, this is such a taking of him, that the bailiff may justify the breaking open of the house to carry him away. When a person has committed treason, or felony, &c. doors may be broke open to arrest the offender; but not in civil cases, except it be in pursuit of one arrested; or where a house is recovered by real action, to deliver possession to the person recovering. If a bailiff find an outer door, &c. open, 'tis said he may open the inner door to make an arrest. An arrest in the night, as well as the day, is lawful. A bailiff, upon an arrest, ought to show at whose suit, out of what court the writ issues, and for what cause, &c. but this is, when the party arrested submits himself to the arrest. A bailiff sworn, and known, need not shew his warrant, though the party demands it: nor is any other special bailiff bound to shew his warrant, unless it be demanded. A person may be re-taken on a Sunday, where arrested the day before. Also, bail may take the principal on a Sunday, and confine him 'till Monday, and then render him.—(c.)

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## ARSON

Is the malicious and wilful burning of the house, or out-house, of another person. The offence of arson, strictly so called, may be committed by wilfully setting fire to one's own house, provided one's neighbor's house is thereby also burnt: but if no mischief is done, but to one's own, it does not amount to felony, though the fire was kindled with intent to burn another's: for no intention to commit a felony, amounts to felony. However, such wilful firing of one's own house, in a town, is a high misdemeanor, and punishable by fine, imprisonment, pillory, and perpetual sureties for the good behavior. And if a landlord, or reversioner, set fire to his own house, of which another is in possession under a lease from himself, or from those whose estate he hath, it shall be accounted arson: for, during the lease, the house is the property of the tenant. A bare attempt to burn, by actually setting fire to a house, unless it absolutely burns, does not fall within the description of incendit, et combusit, (set fire to, and burned,) which were words necessary in the days of law latin, to all indictments of this sort. But the burning and consuming of any part, is sufficient, though the

fire be afterwards extinguished. The burning must also be malicious, otherwise it is only a trespass; and therefore no negligence, or mischance, amounts to arson.—(d.)

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### ASSAULT AND BATTERY.

An assault is an attempt, or offer, to beat another, without touching him: as if one lifts up his cane, or fist, in a threatening manner, at another; or strikes at him, but misses him, this is an assault. This is an inchoate violence, amounting considerably higher than bare threats; and, therefore, though no actual suffering is proved, yet the party injured, may have redress by action; wherein he shall recover damages, as a compensation for the injury.—(e.) This offence is also indictable, and punishable with fine and imprisonment, or with other ignominious corporal penalties; where it is committed with any very atrocious design; as in case of an assault, with an intent to murder, or with an attempt to commit a rape, &c.: in all which cases, besides heavy fine and imprisonment, it is usual to award judgment of the pillory.—(g.) Battery is the unlawful beating of another. The least touching of another's person, wilfully in anger, is a battery; for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it: every man's person being sacred, and no other having a right to meddle with it, in any, the slightest, manner. But battery is, in some cases, justifiable and lawful; as where one, who hath authority, a parent, or master, gives moderate correction to his child, his scholar, or his apprentice. So also, on the principle of self-defence: and in defence of one's goods, or possession, if a man endeavors to deprive one of them, he may justify laying hands on the aggressor to prevent him; and in case he persists with violence, he may be beaten away: this, too, in the exercise of an office, as that of church warden, &c. a man may lay hands upon another, to turn him out of church, and prevent his disturbing the congregation. The remedies are the same as in assault.—(g.)

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### BAIL.

In actions against heirs, executors, and administrators, for debts of the deceased, bail is not demandable; for the action is not so properly against them in person, as against the effects of

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(d)—4 Bl. Com. p. 220, &c. (e)—3 Ibid. p. 120. (g)—4 Ibid. p. 216.

the deceased in their possession: except in actions for a devantavit, or wasting the goods of the deceased; that wrong being of their own committing. The bail jointly and severally undertake, that if the defendant be condemned in the action, he shall pay the costs and condemnation, or render himself a prisoner, or that they will pay it for him; and may be discharged by surrendering the defendant into custody by the time allowed by law: for which purpose they are, at all times, entitled to a warrant to apprehend him.—(a.) When a delinquent is arrested, he ought, regularly, to be carried before a justice of the peace: and if, upon inquiry, it manifestly appears, either that no such crime was committed, or that the suspicion entertained of the prisoner was wholly groundless, in such cases only, it is lawful totally to discharge him: otherwise, he must, either be committed to prison, or give bail; that is, put in securities for his appearance to answer the charge against him. This commitment, therefore, being only for safe custody, wherever bail will answer the same intention, it ought to be taken, as in most of the inferior crimes: but in offences of a capital nature, no bail can be a security equivalent to the actual custody of the person. For what is there that a man may not be induced to forfeit, to save his own life? And what satisfaction, or indemnity, is it to the public, to seize the effects of them, who have bailed a murderer, if the murderer himself be suffered to escape with impunity? But to refuse, or delay, to bail any person bailable, is an offence against the liberty of the subject in any magistrate: and, on the other hand, if the magistrate takes insufficient bail, he is liable to be fined, if the criminal doth not appear. Bail is taken, most usually, by the justices of the peace: but no justice of the peace can bail, 1st, upon an accusation of treason; nor 2d, of murder; nor 3d, in case of manslaughter, if the prisoner be clearly the slayer, and not barely suspected to be so; or, if any indictment be found against him; nor 4th, such as, being committed for felony, have broken prison; because it not only carries a presumption of guilt, but is superadding one felony to another: 5th, Persons taken with the main-nour, or in the fact of felony: 6th, Persons charged with arson: all which are clearly not admissible to bail by the justices.—Others are of a dubious nature, as, 7th, Thieves openly defamed, and known; 8th, Persons charged with other felonies, or manifest and enormous offences, not being of good fame; and 9th, Accessories to felony, that labor under the same want of reputation. These seem to be in the discretion of the justices, whether bailable or not. The last class are such as must be bailed upon offering sufficient security; as, 10th, Persons of good fame, charged with a bare suspicion of manslaughter, or other inferior

(a)—3 Bl. Com. p. 291.

homicide; 11th, Such persons, being charged with petit larceny, or any felony not before specified; 12th, Or with being accessory to any felony. But it is agreed, that the court of King's Bench, (or any judge thereof, in time of vacation) may bail for any crime whatsoever; be it treason, murder, or any other offence, according to the circumstances of the case.—(a.)

### BAILEMENT

Is a delivery of goods in trust, upon a contract expressed, or implied, that the trust shall be faithfully executed, on the part of the bailee; as if cloth be delivered to a tailor, to make a suit of cloaths, he has it upon an implied contract, to render it again when made, and that in a workmanly manner. If money, or goods, be delivered to a common carrier, to convey from Oxford to London, he is under a contract in law to pay, or carry them, to the person appointed. If a horse, or other goods, be delivered to an inn-keeper, or his servants, he is bound to keep them safely, and restore them, when his guest leaves the house. If a man take in a horse, or other cattle, to graze, and departure, in his grounds, he takes them upon an implied contract, to return them, on demand, to the owner. If a pawn-broker receives plate, or jewels, as a pledge, on security for the re-payment of money lent thereon, at a certain time, he has them upon an express contract, or condition, to restore them, if the pledgor performs his part by redeeming them in due time. And so if a landlord distrains goods for rent, or a parish officer for taxes, these, for a time, are only a pledge, in the hands of the distrainers, and they are bound by an implied contract in law, to restore them, on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus. If a friend delivers any thing to his friend to keep for him, the receiver is bound to restore it on-demand; and will not be chargeable with any loss, unless it happens by gross neglect, which is an evidence of fraud; but, if he undertakes specially to keep the goods safely and securely, he is bound to take the same care of them, as a prudent man would take of his own. In all these instances, there is a special qualified property, transferred from the bailor, to the bailee, together with the possession. It is not an absolute property, because of his contract for restitution; the bailor having still left in him, the right to a chose in action, grounded upon such contract. And on account of this

(a)—4 Bl. Com. p. 296, &c.

## BAILMENT.

qualified property of the bailee, he may, as well as the bailor, maintain an action against such as injure, or take away these chattels. The tailor, the carrier, the innkeeper, the assisting farmer, the pawn-broker, the distrainer, and the general bailee, may, all of them, vindicate, in their own right, this their possessory interest, against any stranger or third person. (a) Upon bailment, or delivery of goods, these things are to be observed; if they are delivered to a man to be safely kept, and, after, these goods are stolen from him, as he undertook to keep them safely, this shall not excuse him; but if he undertook to keep them as his own, he shall be excused. If, when goods are delivered to one as a pledge, they are stolen from him, action lieth not against him; because he hath a property in them, and, therefore, ought to keep them no otherwise than his own. A man leaves a chest locked up with another to be kept, and doth not make known to him what is therein; if the chest and goods in it are stolen, the person who received them shall not be charged for the same, for he was not trusted with them. And what is said as to stealing, is to be understood of all other inevitable accidents. It is necessary for a man, who receives goods to be kept, to receive them in a special manner, viz: to be kept as his own, or at the peril of the owner. The case of a carrier, inn-keeper, &c. is different; for as they have their hire, and thereby implicitly undertake the safe delivery of the goods entrusted with them, they shall answer the value, if they are stolen from them. If one deliver his goods to another person, to be delivered over to a stranger, the deliverer may command his power, and require the goods again; and if the bailee refuses to deliver them, he may have an action for them. And where a man delivers goods to another, to be re-delivered to the deliverer, at such a day, and before the bailee doth sell the goods, the bailor may, at the day, seize and take his goods, for the property is not altered. One delivers a ring to another to keep, and he breaks, and converts the same to his own use; if I deliver my sheep to another to be kept, and he suffers them to be drowned by his negligence; or if the bailee of a horse, or goods, &c. kill, or spoil them, in these cases actions will lie. If a man bail goods to one, to bail over to another, and the bailee, contrary to the trust, doth not deliver, but converts them to his own use, he shall be chargeable, both to the bailor, and him, to whom the goods ought to have been bailed. (b) When property is bailed for a particular purpose, if it is used for a different purpose, and a loss happens, the bailee is liable, even if it appear that he has used due care and attention; the legal presumption being, that the loss happened in consequence of this misuser. (c) If a person hires a negro from another, for a

(a)—3 Bl. Com. pp. 451-2. (b)—Jacob's Law Dictionary. (c) De Tollerore vs. Fuller: 1 Mill, p. 121.

Mitited time, or purpose, he is under an implied warranty to return him, when the time expires, or the purpose is answered; and the bailee shall not be permitted to put the person, from whom he received the negro, to an action to recover him; and, in that action, set up as a defence, a title in a third person. (d) By ordinary diligence, is to be understood, that sort of care, which a prudent man would exercise in relation to his own affairs; and to fix on that character, we must look through this community generally, selecting neither the most scrupulously diligent, nor the most negligent; and having thus established a standard, with a view to the habits of the country, in which we live, there is no better way of making the application, than by the self-enquiry, what should I have done under similar circumstances. The most diligent, would not, perhaps, trust a sick horse with a servant; and yet, it may be safely affirmed, that among the ordinarily careful, fifteen out of twenty would have done so; especially when they were to return in a very short period.—(e.)

## BASTARD.

A bastard is one, that is not only begotten, but born out of lawful matrimony; so likewise, are all children born so long after the death of the husband, that, by the usual course of gestation, they could not have been begotten by him. But this being a matter of some uncertainty, the law is not exact as to a few days. But, if a man dies, and his widow, soon after, marries again, and a child is born within such a time, that by the course of nature it might have been the child of either husband, in this case, he is said to be more than ordinarily legitimate; for he may, when he arrives to years of discretion, choose which of the fathers he pleases. Children born during wedlock may, in some circumstances, be bastards; as in case of the husband's absence more than nine-months, so that no access to his wife can be presumed, her issue, during that period, shall be bastards. But, generally, during the coverture, access of the husband shall be presumed, unless the contrary can be shewn. In a divorce a mensa and thoro, if the wife breeds children, they are bastards; for the law will presume the husband and wife conformable to the decree of separation, unless access be

(d)—Manning vs. Norwood: 2 Mill, p. 376. (e)—1 Nott & McCord, p. 421; La Borde vs. Ingraham—A boatman is a common carrier, and liable for all losses, except such as are occasioned by the act of God, or the enemies of the country. Harrington vs. Liles: 2 Nott & McCord, p. 98.

## BOTTOMRY.

proved; but in a voluntary separation, by agreement, the law will suppose access, unless the negative be shewn. So also, if there is an apparent impossibility of procreation, on the part of the husband, the issue of the wife shall be bastard.

A bastard can inherit nothing, being looked upon as the son of nobody, and sometimes called nullius filius, sometimes filius populi. Yet he may gain a surname by reputation, though he has none by inheritance; and as bastards cannot be heirs themselves, so neither can they have any heirs but them of their own bodies; for as all collateral kindred consists in being derived from the same common ancestor, and as a bastard has no legal ancestors, he can have no collateral kindred; and consequently can have no legal kindred, but such as claim by a lineal descendant from himself. Therefore, if a bastard purchases land, and dies seized thereof, without issue and intestate, the land shall escheat.—(a.)

All other children have their primary settlement in their father's parish; but a bastard, in the parish where born. However, if a woman be sent by order of justices to a parish, which she does not belong to, and drops her bastard there, the bastard shall be settled in the parish from whence she was illegally removed.—(b.)

## BOTTOMRY.

BOTTOMRY originally arose from the permitting the master of a ship, in a foreign country, to hypothecate the ship, in order to raise money to refit; and is in the nature of a mortgage of the ship, when the owner takes up money to enable him to carry on his voyage, and pledges the keel, or bottom, of the ship, (partem pro toto, a part for the whole) as a security for the repayment; in which case, it is understood, that, if the ship be lost, the lender loses his whole money; but if it returns in safety, then he shall receive back his principal, and also, the premium, or interest, agreed upon, however it may exceed the legal rate of interest. And this is allowed to be a valid contract in all trading nations, for the benefit of commerce, and by reason of the extraordinary hazard run by the lender; and, in this case, the ship and tackle, if brought home, are answerable, as well as the person of the borrower, for the money lent. But, if the loan is not upon the vessel, but upon the goods and merchandize, which must be necessarily sold, or exchanged, in the

(a)—2 Bl. Com. p. 249. (b)—1 Ibid. p. 454, &c.

course of the voyage, then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to take up money at respondentia. These terms are also applied to contracts for the re-payment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself: when a man lends a merchant one thousand pounds, to be employed in a beneficial trade, with condition to be repaid, with extraordinary interest, in case such a voyage be safely performed, which kind of agreement is sometimes called *onus nauticum*, and sometimes *usura maritima*.—(a.)

Where bonds, or bills, of bottomry, are sealed, and the money is paid, if the ship receives injury by storm, fire, &c. before the beginning of the voyage, then the person borrowing, only, runs the hazard, unless it be otherwise provided; as, that if the ship shall not arrive at such a place, at such a time, &c. there the contract has its beginning from the time of the sealing; but, if the condition be, that if such a ship shall sail from London to any port abroad, and shall not arrive there, &c. then, &c. there the contingency hath not its beginning 'till the departure. A master of a ship may not take up money on bottomry, in places where his owners reside, except he be a part owner; and then he may take up only so much as his part will answer in the ship; for if he exceeds that, his own estate is liable to make satisfaction; but, when a master is in a strange country, where there are no owners, nor any goods of theirs, nor of his own, and for want of money, he cannot perform his voyage, there he may take up money upon bottomry, and all the owners are chargeable thereto; but this is understood where money cannot be procured by exchange, or any other means: And, in the first case, the owners are liable by their vessel, though not in their persons; but they have their remedy against the master of the ship.—(b.)

### BURGLARY

Is the breaking, and entering into, a mansion-house, by night, with intent to commit a felony. The time must be by night; and as to what is reckoned night, and what day, for this purpose, it is held, that, if there be daylight, or crepusculum, enough, begun, or left, to discern a man's face withal, it is no burglary; but this does not extend to moonlight. It may be committed in a mansion-house, or other house, such as barn, stable, or

(a)—<sup>2</sup> Bl. Com. p. 457. (b)—Jacob's Law Dictionary.

ware-house, being parcel of the mansion-house, and within the same common fence, though not under the same roof, nor contiguous; for the capitol house protects, and privileges all its branches, and appurtenances, if within the curtilage, or house-stall. But no distant barn, ware-house, or the like, are under the same privileges, nor looked upon as a man's castle of defence; nor is a breaking open of houses, wherein no man resides, and which, therefore, for the time being, are not mansion-houses, attended with the same circumstances of midnight terror. A house, however, wherein a man sometimes resides, and which the owner hath left only for a short season, with an intention of returning, is the object of burglary; though no one be in it, at the time of the fact committed. But, if I hire a shop, parcel of another mansion-house, and work, or trade in it, but never lie there, it is no dwelling-house, nor can burglary be committed therein; for, by the lease, it is severed from the rest of the house, and therefore, is not the dwelling of him, who occupies the other part, nor can I be said to dwell therein, when I never lie there. Burglary may also be committed in a church, or by breaking the wall, or gate, of a town; but cannot be committed in a tent, or booth, erected in a market, or fair, though the owner may lodge therein; for the law regards thus highly nothing but permanent edifices. To commit burglary there must be both a breaking, and entry, but they need not both be done at once; for, if a hole be broken one night, and the same breakers enter the next night, through the same, they are burglars. But there must, in general, be an actual breaking; as, at least, by breaking, or taking out the glass of, or otherwise opening, a window; picking a lock, or opening it with a key; nay, by lifting up the latch of a door, or loosing any other fastening, which the owner has provided. But, if a person leaves his doors, or windows, open, it is his own folly and negligence; and, if a man enters therein, it is no burglary; yet, if he afterwards unlocks an inner, or chamber door, it is so; and to come down a chimney is held a burglarious entry; for that is as much closed, as the nature of things will permit. So also, to knock at a door, and upon its being opened, to rush in with a felonious intent; or under pretence of taking lodgings, to fall upon the landlord, and rob him; or to procure a constable to gain admittance, in order to search for traitors, and to bind the constable, and rob the house, all these entries have been adjudged burglaries, though there was no actual breaking; for the law will not suffer itself to be trifled with by such evasions, especially, under the cloak of legal process. And so, if a servant opens and enters his master's chamber door, with a felonious design; or, if any other person lodging in the same house, or in a public inn, opens and enters another's door, with such wily intent, it is burglary. Nay, if the servant conspires with

a robber, and lets him into the house by night, this is burglary, in both.

As for the entry, any, the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient; as, to step over the threshold, to put a hand, or a hook, in at a window, or draw out goods, or a pistol, to demand one's money, are, all of them, burglarious entries.

As to the intent, it is clear that such breaking and entry must be with a felonious intent; otherwise it is only a trespass. And it is the same, whether such intention be carried into execution, or only demonstrated by some overt act, or attempt, of which the jury is to judge: And, therefore, such a breach and entry of a house, as has been described, by night, with intent to commit a robbery, a rape, or any other felony, is burglary; whether the thing be actually perpetrated or not.—(e.) If a person be within the house, and steal goods, and then open the house on the inside, and go out with the goods, this is burglary, though the thief did not break the house. If the owner of the house breaks into the rooms of his lodgers, and steals their goods, it cannot be burglary to break into his own house, but it is felony to steal their goods.—(n.)

### CHOSE IN ACTION.

Upon all contracts, or promises, either express, or implied, the law gives an action of some sort or other, to the party injured, in case of non-performance; to compel the wrong-doer to do justice to the party, with whom he has contracted; and on failure of performing the identical thing he engaged to do, to render a satisfaction equivalent to the damage sustained. But while the thing, or its equivalent, remains in suspense, and the injured party has only the right, and not the occupation, it is called a chose in action. The form of assigning a chose in action, is in the nature of a declaration of trust; and an agreement to permit the assignee to make use of the name of the assignor, in order to recover the possession. And, therefore, when in common acceptation, a debt is said to be assigned over, it must still be sued in the original creditor's name.—(a.) If an action be brought upon an assigned demand, not negotiable, in the name of the original creditor, and fail, the costs are demandable only from the nominal plaintiff, and not from the person to whom the assignment was made, who is only to be regarded as agent.—(b.)

(e)—4 Bl. Com. p. 223, &c. (n)—Jacob's Law Dictionary. (a)—2 Bl. Com. pp. 397-442. (b)—2 Mill, p 198.

to the statute; and an old statute gives place to a new one. But if both acts be merely affirmative, and the substance such, that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy. 8th. If a statute, that repeals another, is itself repealed afterwards, the first statute is hereby revived without any formal words for that purpose. 9th, Acts of a legislature, derogatory from the powers of a subsequent legislature, bind not. 10th, Acts of parliament, that are impossible to be performed, are of no validity; and, if there arise out of them collaterally, any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. Thus, if an act of parliament gives a man power to try all causes that arise within a certain place, yet, if a cause should arise, in which he is party, the act is construed not to extend to that, because it is unwarrantable that any man should determine his own quarrel.—(f.)

For the construction of deeds and wills, the following rules have been laid down by courts of justice. 1st, That the construction be favorable, and answer the minds and apparent interest of the parties as nearly, as the rules of law will admit.—The construction must also be reasonable, and agreeable to common understanding. 2d, That as often as there is no ambiguity in the words, made use of, there shall be no exposition contrary to their plain and obvious meaning; but that, if the intention is clear, too minute a stress be not laid on the strict and precise signification of words. Therefore, by a grant of a remainder, a reversion may well pass, and a converse. Another maxim of law is, that neither false English, nor bad Latin will destroy a deed. 3d, That the construction be made upon the entire deed, and not merely upon disjointed parts of it; and that every part of it be, if possible, made to take effect; and no word, but what may operate in some shape or other. 4th, That the deed be taken most strongly against him, that is, the agent, or contractor, and in favor of the other party; but, in general, this rule being one of some strictness and rigor, it is the last to be resorted to; and is never to be relied upon, but where all other rules of exposition fail. 5th, That, if the words will bear two senses, one agreeable to, and the other against, law, that sense be preferred, which is not agreeable thereto. 6th, That in a deed, if there be two clauses so totally repugnant to each other, that they cannot stand together, the first shall be received, and the latter rejected; wherein it differs from a will: for there, of two such repugnant clauses, the latter shall stand; for the first deed, and the last will, are always most available in law: yet, in both cases, we should rather attempt to reconcile them. 7th, That

(f)—1 Bl. Com. p. 87, &c.

a devise be most favorably expounded, to pursue, if possible, the will of the devisor, who, for want of advice, or learning, may have omitted the legal, or proper phrases; and; therefore, many times the law dispenses with the want of words in devises, that are absolutely requisite in all other instances. Thus a fee may be conveyed without words of inheritance; and an estate tail without words of procreation. By a will also, an estate may pass by mere implication, without any express words to direct its course; as where a man devises land to his heir at law, after the death of his wife; here, though no estate is given to the wife in express terms, yet she shall have an estate for life by implication; for the intent of the testator is clearly to postpone the heir title after her death. So also, where a devise is of black acre to A. and white acre to B, in tail, and if they both die without issue, then to C. in fee: here A. and B. have cross remainders by implication; and, on the failure of either's issue, the other, or his issue, shall take the whole; and C's remainder over, shall be postponed, till the issue of both shall fail.—(a.)

## CONTRACT.

A Contract is either executed, as if A. agrees to change horses with B. and they do it immediately; or executory, as if they agree to change next week; and the right only vests; and this kind of contract, which only conveys an interest merely in action, is thus defined, "an agreement, upon sufficient consideration, to do, or not to do, a particular thing." In every contract, there must be, at least, two contracting parties, of sufficient ability to make a contract. It must be upon sufficient consideration. There must be something given in exchange, something that is mutual, or reciprocal; and this thing, which is the price, or motive of the contract, is called the consideration: and it must be a thing lawful in itself, or the contract is void. The consideration may be either a good, or a valuable one. A good consideration is such as that of blood, or of natural love and affection: the satisfaction accruing from which the law esteems an equivalent for whatever benefit may accrue from one relation to another. A valuable consideration is such as money, marriage, or the like; as when I give money, or goods, on a contract, that I shall be repaid money or goods for them again; or when I agree with a man to do his work for

## CONTRACT.

him, if he will do mine for me; or if two persons agree to marry together; or to do any positive acts on both sides; or it may be to forbear on one side, in consideration of something to be done on the other; as, that in consideration that A. the tenant, will repair his house, B. the landlord, will not sue him for waste; or it may be for mutual forbearance on both sides; as that, in consideration that A. will not trade to Lisbon, B. will not trade to Marseilles, so as to avoid interfering with each other. Another species of consideration is, where a man agrees to perform any thing for a price, either specifically mentioned, or left to the determination of the law to set a value on it; or when I agree with a servant to give such wages upon his performing such work. A consideration of some such or other, is so absolutely necessary to the forming of a contract, that an agreement to do, or pay any thing on one side, without any compensation on the other, is totally void in law. As to the thing to be done, or omitted, according to the foregoing definition, it is sufficient here to remark, that the most usual contracts are, 1st, That of sale, or exchange. 2d, That of bailment. 3d, That of hiring, and borrowing. 4th, That of debt: the doctrine, concerning which, will be found under their respective heads.—(b.)

Contracts implied, are such as reason and justice dictate, and which, therefore, the law presumes, that every man has contracted to perform; and upon this presumption, makes him answerable to such persons as suffer by his non-performance. Of this nature are, first, such as are necessarily implied by the fundamental constitution of government, to which every man is a contracting party; and thus it is that every person is bound, and hath virtually agreed, to pay such particular sums of money, as are charged on him by the sentence, or gaolsciss by the interpretation of the law. And whatever the laws order any one to pay, that becomes instantly a debt, which he hath beforehand contracted to discharge. A second class of implied contracts are such, as do not arise from the express determination of any court, or the positive direction of any statute, but from natural reason, and the just construction of law; which class extends to all presumptive undertakings, or assumpsits: which, though never perhaps actually made, yet constantly arise from this general implication and intendment of the courts of judicature, that every man hath engaged to perform what his duty, or justice, requires. Thus, if I employ a person to transact any business for me, or perform any work, the law implies that I undertook, or assumed to pay him, so much as his labor deserved; and if I neglect to make him amends, he has a remedy for this injury, by bringing his action on the case upon this implied as-

(b)—2 Bl. Com. p. 442, &c.

sumpsit; and the valuation of his trouble is submitted to the determination of a jury. Where one takes up goods, or wares, of a tradesman, without expressly agreeing for the price, there the law concludes that both parties did intentionally agree that the real value of the goods should be paid. Where one has had, or received, money belonging to another, without any valuable consideration given on the receiver's part, the law construes this to be money had and received for the use of the owner only; and implies that the person so receiving, promised, and undertook, to account for it, to the true proprietor. Where a person has laid out, and expended, his money, for the use of another, at his request, the law implies a promise of re-payment. Upon a stated account between two merchants, or other persons, the law implies, that he, against whom the balance appears, has engaged to pay it to the other, though there be not any actual promise. The last class of contracts implied by reason, and construction of law, arise upon this supposition, that every one, who undertakes any office, employment, or duty, contracts with those, who employ, or entrust him, to perform it with integrity, diligence, and skill, and if, by want of either of those qualities, any injury accrues to individuals, they have their remedy in damages. If the sheriff does not execute a writ sent to him, or if he wilfully makes a false return thereof, the party aggrieved shall have an action on the case, for damages, to be assessed by a jury. An advocate, or attorney, that betrays the cause of his client, or, being retained, neglects to appear at the trial, by which the cause miscarries, is liable to an action on the case, for a reparation to his injured client. There is also, in law, always an implied contract, with a common innkeeper, to secure his guest's goods in his inn; with a common carrier, to be answerable for the goods he carries; with a common farrier, that he shos a horse well, without laming him; with a common tailor, or other workman, that he performs his business in a workmanlike manner; in which, if they fail, an action on the case lies, to recover damages for such breach of their general undertaking; but if I employ a person to transact any of those concerns, whose common profession, or business, it is not, the law implies no such general undertaking; but, to charge him with damages, a special agreement is required. Also, if an innkeeper, or other victualler, hangs out a sign, and opens his house for travellers, it is an implied engagement, to entertain all persons who travel that way; and upon this universal assumpsit, an action will lie against him for damages, if he, without good reason, refuses to admit a traveller. If any one cheats me with false weights, or measures, or by selling me one commodity for another, an action on the case lies against him for damages, on the contract, for the law always implies, that every transaction is fair and honest. In contracts, likewise, for sale,

## CONTRACT.

It is certainly understood, that the seller undertakes, that the commodity he sells is his own; in contracts for provisions, it is always implied, that they are wholesome; and if he, that selleth any thing, doth, upon the sale, warrant it to be good, the law annexes a tacit contract to this warranty, that, if it be not so, he shall make compensation to the buyer; but the warranty must be upon the sale; for, if it be made after, and not at the time of the sale, it is a void warranty; for it is then made without any consideration. Also, the warranty can only reach to things in being, at the time of the warranty made; as, that a horse is sound at the time of the sale, not that he will be sound two years after. But if the seller knows the goods to be unsound, and hath used any art to disguise them, or, if they are, in any shape, different from what he represents them to be to the buyer, this artifice shall be equivalent to an express warranty, and the seller is answerable for their goodness. A general warranty will not extend to guard against defects, that are plainly and obviously the objects of one's senses; as, if a horse be warranted perfect, and wants either a tail, or an ear; unless the buyer, in this case, be blind. But if cloth is warranted to be of such a length, when it is not, there an action on the case lies for damages; for that cannot be discerned by sight, but only by a collateral proof, the measuring of it. Also, if a horse is warranted sound, and he wants the sight of an eye, though this seems to be the object of one's senses, yet as the discernment of such defects is frequently matter of skill, it hath been held, that an action lieth to recover damages for this imposition.—(c.)

If a man sells his horse, or other thing to another, for a sum of money; or covenants, because there is a quid pro quo, or one thing for another; but if a person makes a promise to me, that I shall have twenty shillings, and that he will be debtor to me therefore, and, after I demand the twenty shillings, and he will not give it me, yet I shall never have any action to recover it; because this promise was no contract, but a bare promise, or nudum factum; though, if any thing were given for the twenty shillings, if it were but to the value of a penny, then it had been a good contract. There is a diversity, where a day of payment is limited on a contract, and where not; for, where it is limited, the contract is good presently, and an action lies upon it without payment; but in the other not. If a man buys twenty yards of cloth, &c. the contract is void, if he do not pay the money presently; but, if day of payment be given, there the one may have an action for the money, and the other trover for the cloth. Where a seller says to a buyer, he will sell his horse for so much, and the buyer says he will give it; if he presently tell out the money, it is a contract; but if he do not, it is no contract.

The property of any thing sold, is in the buyer ~~immediately~~, by the contract; though, regularly, it must be delivered to the buyer before the seller can bring his action for the money. If one contract to buy a horse, or other thing of me, and no money is paid, or earnest given, nor day set for payment thereof, nor the thing delivered; in these cases no action will be for the money, on the thing sold, but it may be sold to another. All contracts are to be certain, perfect, and complete. An agreement to give so much for a thing as it shall be reasonably worth, is void for uncertainty. So a promise to pay money in a short time, &c. If I contract with another to give him ten pounds for such a thing, if I like it on seeing the same; this bargain is said to be perfect at my pleasure; though I may not take the thing before I have paid the money. If a contract be, to have for cattle sold, ten pounds, if the buyer do a certain thing, or else to have twenty pounds, it is a good contract, and certain enough; and if I agree with a person to give him so much for his horse, as J. S. shall judge him to be worth, when he hath judged it, the contract is complete, and an action will lie on it: and the buyer shall have a reasonable time to demand the judgment of J. S. But, if he dies before the judgment is given, the contract is determined. In contracts, the time is to be regarded in, and from, which the contract is made; the words shall be taken in the common and usual sense, as they are taken in that place, where spoken; and the law doth not look so much upon the form of words, as on the substance and mind of the parties therein. A contract for goods may be made, as well by word of mouth, as by deed in writing; and where it is in writing only, not sealed and delivered, it is all one as by word. But, if the contract be by writing, sealed and delivered, and so turned into a deed, then it is of another nature, and in this case, generally, the action, or the verbal contract is gone, and some other action lies for breach therof.—(d.)

It is proper and necessary, that every party, who enters into a contract, should do so with the utmost fairness and good faith, and whenever any fraud, or concealment of any circumstances, is practiced by either party, it vitiates the contract.—(e.)— When a contract is entered into under a misapprehension, and ignorance of such defects, as would have prevented the contract, had the defects been known to the parties at the time, it ought, in no case, to be enforced.—(g.) The legality, or illegality, as well as the construction of a contract, must depend on the *lex loci*, (law of the place) where it was executed; unless it appear from the contract itself, that it was the understanding of

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(d)—Jacob's Law Dictionary. (e)—Hobson vs. Humphries. 2 Mill, p. 372.  
(g)—Bernard vs. Yates. 1 Nott & McCord, p. 142.

## CORPORATIONS.

the parties, that it was to be executed elsewhere. (a) Where an overseer, without any violation of the contract on his part, is turned off by his employer, he shall be entitled to wages for the whole year. (b) Though a corporation cannot contract, directly, except under seal, yet, it may by vote, or other act, sufficiently expressive of the corporate will and intention, appoint an agent, whose acts and contracts, within the scope of his authority, will be binding on the corporation.—(c.)

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## COPARCENERS.

An estate held in coparcenary is, where lands of inheritance descend from the ancestor to two, or more, persons: And in this case, all the coparceners put together, make but one heir, and have but one estate among them. They may sue, and be sued jointly, for all matters relating to their lands; and entry of one of them shall, in some cases, enure as the entry of them all. They cannot have an action of trespass, or of waste, against each other. If one parcerne claims his share, though no partition be made, the lands are no longer held in coparcenary, but in common.—(d.)

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## CORPORATIONS.

As all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable, it has been found necessary, when it is for the advantage of the public, to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality. These artificial persons are called bodies politic, or corporations; and, when they are consolidated and united into a corporation, they and their successors are considered as one person in law; and, as one person, they have one will, which is collected from the sum of the majority

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(a)—1 Nott & M'Cord, p. 175: *Touro vs. Cooper*. (b)—*Ibid.* p. 284: *Gor. ads. Adams*. (c)—*Ibid.* p. 232: *Garvey ads. Colcock, et al.* (d)—2 Bl. Com. p. 187.

of the individuals. Corporations are either aggregate, or sole: aggregate, when they consist of many persons united together, into one society, and are kept up by a perpetual succession of members, so as to continue forever; of which kind are the mayor and commonalty of a city, the college of physicians, and company of surgeons in London, for the improvement of medical science.

Corporations sole, consist of one person only, and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly, that of perpetuity, which, in their natural persons, they could not have had; as a person of a church, in which case, all the original rights of the personage, are preserved entire to the successor; for the present incumbent, and his predecessor, who might have lived seven centuries ago, are, in law, one and the same person; and what was given to the one was given to the other also. Where a corporation is erected, a name must be given to it, and by that name alone it must sue and be sued, and do all legal acts; and, as soon as it is duly erected, many rights, capacities, and powers, are tacitly annexed of course. As, 1st, to have perpetual succession; and, therefore, all aggregate corporations have a power, necessarily implied, of electing members in the room of such as go off. 2d, To sue, or be sued, to plead, or be impleaded, grant, or receive, by its corporate name, and do all other acts, as natural persons may. 3d, To purchase lands, and hold them for the benefit of themselves and their successors. 4th, To have a common seal; for a corporation, being an invisible body, cannot manifest its intentions, by any personal act, or oral discourse; and, therefore, acts and speaks only by its common seal. 5th, To make bye-laws, or private statutes, for the better government of the corporation, which are binding upon themselves, unless contrary to the laws of the land. These five powers are inseparably incident to every corporation aggregate; but two of them, though they may be practised, yet are necessary to a corporation sole, viz: to have a corporate seal, and to make bye-laws. Corporations aggregate, may also take goods and chattels, for the benefit of themselves and their successors; but a corporation sole, cannot. But, wherever, by their constitution, they have a head, they cannot do any acts during the vacancy of the headship, except only appointing another; nor are they then capable of receiving a grant. Corporations, like natural persons, are bound, in their corporate capacity, to act up to the end and design, whatever it be, for which they were erected. Any particular member may be disfranchised, or lose his place in the corporation, by acting contrary to the laws of the society, or the laws of the land; or he may resign it by his own voluntary act. The corporation may, also, be itself dissolved, in several ways; and, in this case, their

lands and tenements, shall revert to the person, or his heirs, who granted them to the corporation; for the law doth annex a condition to every grant, that if the corporation be dissolved, the grantor shall have the lands again; because the grant faileth. The debts of a corporation, either to, or from, it, are totally extinguished by its dissolution; so that the members thereof, cannot recover, or be charged with, them, in their natural capacities. Corporations may be dissolved: 1st, By the natural death of all its members, in case of an aggregate corporation. 2d, By surrender of its franchises. 3d, By forfeiture of its charter, through negligence, or abuse of its franchises; in which case, the law judges, that the body politic has broken the condition, upon which it was incorporated, and therefore, the incorporation is void.—(a.)

With regard to sole corporations, a considerable distinction must be made; for if such sole corporation be the representative of a number of persons, it has the same powers, as corporations aggregate, to take personal property, or chattels, in succession; and, therefore, a bond to such a sole corporation is good in law, and the succession shall have the advantage of it, for the benefit of the aggregate society, of which he is, in law, the representative; whereas, in the case of sole corporations, which represent no others, but themselves, as bishops, parsons, and the like, no chattel interest can regularly go in succession; and, therefore, if a lease for years be made to the bishop of Oxford, and his successors, in such case, his executors, or administrators, and not his successors, shall have it; for the word successors, when applied to a person, in his political capacity, is equivalent to the word heirs, in his natural capacity. And as such, a lease for years, if made to John and his heirs, would not vest in his heirs, but in his executors; so, if it be made to John, bishop of Oxford, and his successors, who are the heirs of his body politic, it shall still rest in his executors, and not in such his successors. The reason of this is obvious: the law looks upon goods and chattels, as of too low and perishable a nature, to be limited either to heirs, or such successors as are equivalent to heirs. It would also follow, that, if any such chattel interest (granted to a sole corporation and his successors) were allowed to descend to such successor, the property thereof must be in abeyance from the death of the present owner, until the successor be appointed: And this is contrary to the nature of a chattel interest, which can never be in abeyance, or without an owner, but a man's right therein, when once suspended, is gone forever. This is not the case in corporations aggregate, where the

(a)—1 Bl. Com. p. 467, &c. It is presumed that the expiration of the term of a charter must be attended with all the consequences of a dissolution in the cases enumerated.

Right is never in suspense, nor in the other sole corporations before mentioned, who are rather to be considered as heads of an aggregate body, than subsisting merely in their own right.—(b.)

The law implies a promise on the part of every member of a society, or corporation, to pay all the sums required by the rules and bye-laws of that society, or corporation; and where they have not the means of enforcing payment, they are entitled to the aid court of the common pleas.—(c.)

### COURTS.

The Court of King's Bench keeps all inferior jurisdictions within the bounds of their authority; and may either remove their proceedings to be determined here, or prohibit their proceedings below. It superintends all civil corporations. It commands magistrates and others to do what their duty requires, in every case, where there is no other specific remedy. It protects the liberty of the subject by speedy and summary interposition. It takes cognizance both of criminal and civil causes.—(d.)

### CRIMES.

A crime, or misdemeanor, is an act, committed, or omitted, in violation of a public law, either forbidding, or commanding it. In common usage, the word crimes is made to denote such offences, as one of a deeper and more atrocious dye; whilst smaller faults, and omissions of less consequence, are comprised under the gentler names of misdemeanors.—(e.)

In enquiring what persons are, or are not, capable of committing crimes; or, which is all one, who is exempted from the censures of the law, upon the commission of those acts, which, in other persons, would be severely punished, we must have recourse to particular and special exceptions; for the general rule is, that no person shall be excused from punishment, for disobe-

(b)—2 Bl. Com. pp. 431—2. (c)—2 Mill, p. 215. Corporation of Columbia vs. Harrison. The Court of Common Pleas possesses all the powers of the Court of King's Bench in England, in superintending corporations. The State vs. City Council of Charleston 1 Mill, 36. (d)—3 Bl. Com. p. 42. (e)—4 Ibid. p. 5.

dience to the laws of his country; excepting such as are expressly defined, and exempted by the laws themselves. All the several pleas and excuses, which protect the committer of a forbidden act, from the punishment, which is otherwise annexed thereto, may be reduced to this single consideration, the want, or defect, of will; the concurrence of the will, when it has its choice, either to do, or avoid, the fact in question, being the only thing that renders transactions praiseworthy or culpable. And, to constitute a crime against human laws, there must be first, a vicious will; and, secondly, an unlawful act consequent upon such vicious will. There are three cases, in which the will does not join with the act: 1st, Where there is a defect of understanding: 2d, Where there is understanding and will sufficient residing in the party, but not called forth, and exerted, at the time of the action done; which is the case of all offences committed by chance, or ignorance: 3d, Where the action is constrained by some outward force, or violence. The first case of a deficiency in will, which excuses from the guilt of crimes, arises from infancy, or nonage; which is a defect of the understanding. But the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad eleven years old may have as much cunning as another of fourteen; and in these cases, the maxim is, *malitia supplet astutem*, (malice supplies the place of age.) Under seven years of age, an infant cannot be guilty of felony; for then a felonious intention is, almost, an impossibility in nature; but, at eight years old, he may be guilty of felony. Although an infant under fourteen shall be, *prima facia* (at first appearance) adjudged incapable of mischief, yet if it appears to the court and jury that he could discern between good and evil, he may be convicted, and suffer death; and a boy nine years old, who had killed his companion, has been sentenced to death. A boy of eight years of age has been found guilty, condemned, and hanged; it appearing that he had malice, revenge, and cunning.

A second case of a deficiency of will, is that of an idiot, or lunatic, who is not chargeable with his own acts committed, when under either of these incapacities. And, if a man, in his sound memory, commits a capital offence, and before arraignment for it, becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advise and caution, that he ought; and, if after he has pleaded, the prisoner becomes mad, he shall not be tried; for, how can he make his defence? If, after he is tried, and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed; for, peradventure, had the prisoner been of sound memory, he might have alledged something in stay of judgment on ex-

cution. As to artificial, voluntarily contracted madness, by drunkenness, or intoxication, the law looks upon this as an aggravation of the offence, rather than as an excuse for any criminal misbehavior.

Another deficiency of will is, when a man commits an unlawful act, by misfortune, or chance, and not by design; and, in this case, if any accidental mischief happen to follow from a lawful act, the party stands excused from all guilt; but, if a man be doing any thing unlawful, and a consequence ensues, which he did not intend, nor foresee, as the death of a man, or the like, his want of foresight shall be no excuse; for, being guilty of one offence, in doing, antecedently, what is in itself unlawful, he is criminally guilty of whatever consequences may follow the first misbehavior. Ignorance, or mistake, is another defect of will when a man, intending to do a lawful act, does that which is unlawful; but, this must be an ignorance, or mistake of fact, not an error in point of law: as, if a man intends to kill a housebreaker in his own house, by mistake kills one of his own family, this is no criminal action; but, if a man thinks he has a right to kill a person excommunicated, or outlawed, wherever he meets him, and does so, this is murder. Another species of defect of will is that arising from compulsion, and inevitable necessity. And of this kind is the matrimonial subjection of the wife to the husband; for neither a son, nor a servant, is excused for the commission of any crime, whether capital, or otherwise, by the command, or coercion, of the parent, or master; though, in some cases, the command, or authority, of the husband, either express, or implied, will privilege the wife from punishment, even for capital offences. And therefore, if a woman commit theft, or burglary, or other offence, against the laws of society, by the coercion of her husband, or even in his company, which the law construes a coercion, she is not guilty of any crime; being considered as acting by compulsion, and not of her own will. But this rule admits of an exception in crimes, that are mala in se, (evil in themselves,) and prohibited by the law of nature; as murder, and the like. In treason also, no presumption of the husband's coercion shall extenuate the wife's guilt. In inferior misdemeanors also, there is another exception; a wife may be indicted, and set in the pillory with her husband, for keeping a brothel; for this is an offence touching the domestic economy and government of the house, in which the wife has a principal share, and is such an offence as the law presumes to be generally conducted by the intrigues of the female sex. And, in all cases, where the wife offends alone, without the company, or coercion, of her husband, she is responsible for her offence, as much as any sinner sole.

A second species of necessity, or compulsion, is what the law calls *duress per minas*; or threats and menaces, which induce a

fear of death, or other bodily harm, and which take away, for that reason, the guilt of many crimes and misdemeanors; but then the fear must be just, and well grounded. Therefore, in time of war, or rebellion, a man may be justified in doing many treasonable acts, by compulsion of the enemy, or rebels, which would admit of no excuse in the time of peace. This, however, seems only, or at least, principally, to hold, as to positive crimes, so created by the laws of society, and which, therefore, society may excuse; but not as to natural offences, so declared by the laws of God, wherein human magistrates are only the executioners of divine punishment. And therefore, though a man be violently assaulted, and hath no other possible means of escaping death, but by killing an innocent person, this fear and force shall not acquit him of murder; for he ought rather die himself, than escape by the murder of an innocent. But, in such a case, he is permitted to kill the assailant; for there, the law of nature and self-defence, its primary canon, have made him his own protector. There is a third species of necessity, which may be distinguished from the actual compulsion of external force and fear; being the result of reason and reflection, which act upon, and constrain, a man's will, and oblige him to do an action, which, without such obligation, would be criminal. And that as, when a man has his choice of two wills set before him, and being under the necessity of choosing one, he chooses the less promiscuous of the two. Here then, will cannot be said freely to exert itself, being rather passive, than active; or, if active, it is rather in rejecting the greater evil, than in choosing the less. Of this sort, is that necessity, where a man is, by the commandment of the law, bound to arrest another for any capital offence, or to disperse a riot, and resistance is made to his authority; it is here justifiable, and even necessary, to beat, to wound, or perhaps, to kill the offenders, rather than to permit the murderer to escape, or the riot to continue, for the preservation of the peace of the country; and the apprehending of notorious malefactors, are of the utmost consequence to the public; and, therefore, excuse the felony, which the killing would otherwise amount to.—(a.)

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### DEBT.

Debts are usually divided into debts of record, debts by specialty, and debts by simple contract. A debt of record is

a sum of money, which appears to be due by the evidence of a court of record. Thus, when any specific sum is adjudged to be due from the defendant to the plaintiff, on an action, or suit at law, this is a contract of the highest nature, being established by the sentence of a court of judicature. Debts upon recognizance, if forfeited by the non-performance of the condition, are also marked among debts of record. Debts by specialty, or special contract, are such, whereby a sum of money becomes, or is acknowledged to be, due, by deed, or instrument, under seal. Debts by simple contract are such, whereby the contract, upon which the obligation arises, is neither ascertained by matter of record, nor yet by deed, or special instrument, but by mere oral evidence, or by notes unsealed, which are capable of a more easy proof, and therefore, only better than a verbal promise.—(a.)

## DEED.

A deed is a writing sealed and delivered by the parties. It is sometimes called a charter, from its materials, carta; (paper) but most usually, when applied to transactions of private persons, it is called a deed, because it is the most solemn and authentic act, that a man can possibly perform, with relation to the disposal of his property; and, therefore, a man shall always be estopped by his own deed, or not permitted to aver, or prove, any thing in contradiction to what he has so solemnly and deliberately avowed. If a deed be made by more parties than one, there ought to be, regularly, as many copies of it, as there are parties. The requisites of a deed, are: 1st, That there be persons able to contract, and be contracted with, for the purpose intended by the deed; and also a thing, or subject matter, to be contracted for; all which must be expressed by sufficient names. 2d, The deed must be founded upon good and sufficient consideration. A deed, or other grant, made without any consideration, is, as it were, of no effect: for it is construed to enure, or be effectual, only to the use of the grantor himself. The consideration may be either a good, or a valuable one. A good consideration is such as that of blood, where a man grants an estate to a near relation; being founded on motives of generosity, prudence, and natural duty. A valuable consideration is such as money, marriage, or the like, which the law esteems an equivalent, given for the grant; and is, therefore, founded in motives

of justice. Deeds made upon good consideration only, are considered as merely voluntary, and are frequently set aside in favor of creditors, and bona fide purchasers. 3d. The deed must be written, or printed; it may be in any character, or language, but it must be on paper, or parchment. 4th, The matter written must be legally, and orderly set forth; that is, there must be words sufficient to specify the agreement, and bind the parties; which sufficiency, must be left to the courts of law to determine. For it is not absolutely necessary in law, to have all the formal parts, that are usually drawn out in deeds, so as there be sufficient words to declare, clearly and legally, the party's meaning. 5th. It is requisite that the deed be read. This is necessary, wherever any of the party desires it; and if it be not done on his request, the deed is void, as to him. If he can, he should read it himself; if he be blind, or illiterate, another must read it to him; if it be read falsely, it will be void; at least, for so much as is misrecited; unless it be agreed by collusion, that the deed shall be read falsely, on purpose to make it void; for, in such case, it shall bind the fraudulent party. 6th. It is requisite that the party, whose deed it is, should seal. 7th, A seventh requisite to a good deed is, that it be sealed by the party himself, or his certain attorney, which, therefore, is expressed in the attestation, "sealed and delivered." A deed takes effect only from this tradition, or delivery; for if the date be false, or impossible, the delivery ascertains the time of it; and if another seals the deed, yet if the party delivers it himself, he thereby adopts the sealing, and, by a parity of reason, the signing also, and makes them both his own. A delivery may be either absolute, that is, to the party, or grantee, himself, or to a third person, to hold 'till some conditions be performed on the part of the grantee; in which last case, it is not delivered as a deed, but as an escrow, that is, as a scroll, or writing, which is not to take effect as a deed, 'till the conditions be performed; and then it is a deed to all intents and purposes. The last requisite to the validity of a deed is the attestation, or execution of it, in the presence of witnesses; though this is necessary rather for preserving the evidence, than for establishing the essence of a deed. If a deed wants any of the essential requisites before mentioned, either 1st, proper parties, and a proper subject matter; 2d, a good and sufficient consideration; 3d, writing on paper, or parchment; 4th, sufficient and legal words, properly disposed; 5th, reading, if desired; before the execution; 6th, sealing; or 7th, delivery, it is void, ab initio, (from the beginning.) It may also be avoided by matter ex post facto (something done after the execution of it:) as 1st, by erasure, interlining, or other alterations in any material point; unless a memorandum be made thereof, at the time of the attestation; 2d, by breaking off, or defacing the seal; 3d, by delivering it up, to be

cancelled: 4th, by the disagreement of such, whose concurrence is necessary in order for the deed to stand; as the husband, where a former covert is concerned; an infant, a person under duress, where those disabilities are removed, and the like: 5th, by the judgment, or decree, of a court of judicature. In any of those cases, the deed may be avoided, either in part, or totally, according as the cause of avoidance is more or less extensive.—(e.)

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## DISTRESS.

DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer, into the custody of the party injured, to procure a satisfaction for the wrong committed. The most usual injury, for which a distress may be taken, is that of non-payment of rent. As to the things which may be distrained, it is a general rule, that all chattels personal, are liable to be distrained, unless particularly protected, or exempted. And, 1st, Whatever is in the personal use, or occupation of a man is, for the time, privileged, and protected from any distress; as an axe, with which a man is cutting wood, or a horse, while a man is riding him; but horses drawing a cart, may, cart and all, be distrained for rent arreare. 2d, Valuable things in the way of trade, shall not be liable to distress; as a horse standing in a smith's shop, to be shod, or in a common inn; or, cloth in a tailor's house; or corn sent to a mill, or a market; for all those are protected and privileged for the benefit of trade; and are supposed, in common presumption, not to belong to the owner of the house, but to his customers. But, generally speaking, whatever the landlord finds upon the premises, whether they, in fact, belong to the tenant, or a stranger, are distrainable by him for rent. With regard to a stranger's beasts, which are found on the tenant's land, the following distinctions are, however, taken: if they are put by consent of the owner of the beasts, they are distrainable immediately afterwards for rent arreare, by the landlord. So, also, if a stranger's cattle break the fences, and commit a trespass by coming on the land, they are distrainable immediately by the lessor, for his tenant's rent, as a punishment to the owner of the beasts, for the wrong committed through his negligence. But if the lands were not sufficiently fenced, so as to keep out cattle, the landlord cannot distrain them, till they have been levant and couchant, on the

land; that is, have been long enough there to have lain down, and risen up to feed; which, in general, is held to be one night at least. And then the law presumes, that the owner may have notice, whether his cattle have strayed, and it is his own negligence not to have taken them away. Yet, if the lessor, or his tenant, were bound to repair the fences, and did not, and thereby the cattle escaped into their grounds, without the negligence or default of the owner, in this case, though the cattle may have been levant and couchant, yet they are not distrainable for rent, till actual notice is given to the owner, that they are there, and he neglects to remove them. 3d. Nothing shall be distrained for rent, which may not be rendered again in as good plight, as when it was distrained. 4th. Things fixed to the freehold, cannot be distrained; as caldrons, windows, doors, and chimney pieces, for they savor of the realty; and, for this reason, corn growing, cannot be distrained. All distresses must be made by day; and when a person intends to make a distress, he must, by himself, or his bailiff, enter on the domised premises. The landlord may not break open a house to make a distress, for that is a breach of the peace; but, when he is in the house, he may break open an inner door. When a man is entitled to distrain for an entire duty, he ought to distrain for the whole at once; and not for part at one time, and part at another. But, if he distrains for the whole, and there is not sufficient on the premises, or he happens to mistake in the value of the things distrained, and so takes an insufficient distress, he may take a second distress to complete his remedy. Things distrained must, in the first place, be carried to some pound, and there impounded by the taker. But, in their way thither, they may be rescued by the owner, in case the distress was taken without cause, or contrary to law, as if no rent be due; if they were taken upon the highway, or the like. But if they be once impounded, even though taken without any cause, the owner may not break the pound, and take them out; for they are then in the custody of the law. A pound is either pound overt, that is, open over head; or pound covert, that is close. If a live distress of animals be impounded in a pound overt, the owner, and not the distrainer, is bound to provide the beasts with food and necessaries; but if they are put in a pound covert, as in a stable, or the like, the landlord, or distrainer, must feed, and sustain them. And a distress of household goods, or other dead chattels, which are liable to be stolen, or damaged by weather, ought to be impounded in a pound covert, else the distrainer must answer for the consequences. A distrainer is not at liberty to work, or use a distress; and if any one irregularity is committed in taking, or ordering a distress, it vitiates the whole, and makes the distrainer a trespasser from the beginning. (a.)

(a)—*3. BL Com. p. 6, &c.*

Where a landlord accepts an order on a person not in funds, his right to distrain is not thereby destroyed; and notice of non-payment is unnecessary.—(b.)

## DOWER.

TENANT in dower is, where the husband is seized of an estate of inheritance, and dies; in this case, the wife shall have a third part of all the lands and tenements, whereof he was seized, at any time during the coverture, to hold to herself during the term of her natural life. She must be the actual wife of the party at the time of his decease; and a divorce a mensa et thoro, (where she is allowed a separate maintenance) does not destroy the dower. She is entitled to be endowed of all lands, and tenements, of which her husband was seized in fee simple, or fee tail, at any time, during the coverture, and of which any issue she might have had, might, by possibility, have been heir. But, if there be donee in special tail, who holds lands to him, and the heirs of his body begotten on Jane, his wife, though Jane may be endowed of these lands, yet, if Jane dies, and he marries a second wife, that second wife shall never be endowed of the lands entailed; for no issue, that she could have, could, by any possibility, inherit them. A seisin in law of the husband will be as effectual, as a seisin in deed, to render the wife dowerable; and, if the land abides in the husband for the interval of but a single moment, it seems that the wife shall be endowed thereof. And it matters not, though the husband alien the lands during the coverture, for he alienes them liable to dower.—(c.)

At a public sale of land, a widow is not bound to give notice of her claim of dower. (d.) The dower of a widow shall be assessed according to the value of the lands, at the time of alienation, and not according to their improved value.—(e.)

## DURESS.

Of this, there are two kinds, viz. duress of imprisonment, where a man actually loses his liberty; and duress per minas,

(b)—*Printem vs. Halkied*, 1 Nott & McCord, p. 188. (c)—2 Bl. Com. p. 129, &c. (d)—*Smith vs. Passenger*, 2 Mich. p. 64. (e)—*Adm'r. of Kynge vs. Gee*, ibid. p. 256.

## EQUITY.

where the hardship is only threatened, and impending. *Dureza per minas* is either for fear of loss of life, or else for fear of mayhem, or loss of limb, and this fear must be upon sufficient reason; not the suspicion of a weak and timid mind, but such as would probably be felt by a man of firmness under the like circumstances; (*non suspicio a juslibet vani et meticolosi hominis. sed talis, qui possit cadere in virum constantem.*) A fear of battery, or being beaten, though never so well grounded, is no duress; neither is the fear of having one's house burned, or one's goods taken away and destroyed; because, in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages; but no suitable atonement can be made for the loss of life or limb. The confinement of a person in any wise is an imprisonment; so that the keeping of a man against his will in a private house, putting him in the stocks, arresting, or forcibly detaining him in the streets, is an imprisonment. And, if a man is under duress of imprisonment, which means a compulsion, by an illegal restraint of liberty, and to obtain his liberty, he seals a bond, or the like, he may allege this duress, and avoid the extorted bond. So too, if he purchases, or conveys, under duress, he may affirm, or avoid such transaction, whenever the duress is ceased. But, if a man be lawfully imprisoned, and, either to procure his discharge, or on any other fair account, seals a bond, or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. To make imprisonment lawful, it must either be by process from a court of judicature, or by warrant from some legal officer, having authority to commit to prison; which warrant must be in writing, under the hand and seal of the magistrate, and express the causes of commitment, in order to be examined into, if necessary, upon a *habeas corpus*. If there be no cause expressed, the gaoler is not bound to detain the prisoner.—(n.)

## EQUITY.

This in its true and genuine meaning, is the soul and spirit of all laws: positive law is construed, and rational law is made by it. In this, equity is synonymous to justice; in that, to the true sense, and sound interpretation of the rule. But the very terms of a court of equity, and a court of law, as contrasted to

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(n)—1 Bl. Com. p. 131, &c. and 2 do. p. 292.—It is presumed no confinement by authority of law can be considered as duress; as, in many cases of arrest, by an officer or individual, without warrant.

each other, are apt to confound and mislead us; as if the one judged without equity, and the other was not bound by any law; whereas every definition or illustration to be met with, which now draws a line between the two jurisdictions, by setting law and equity in opposition to each other, will be found either totally erroneous, or erroneous to a certain degree. Thus in the first place, it is said that it is the business of a court of equity to abate the rigor of the common law; but no such power is contended for; and in all cases of positive law, if there be any hardship, the courts of equity as well as the courts of law, must say with Ulpian, *hoc, quidem, perquam durum est, sed ita lex scripta est.* (This, indeed, is very hard, but so is the law written.) 2d, It is said that a court of equity determines according to the spirit of the rule, and not according to the strictness of the letter. But so also does a court of law; both for instance are equally bound, and equally profess to interpret statutes according to the true intent of the legislature. In general laws, all cases cannot be foreseen, or if foreseen, cannot be expressed; some will arise that fall within the meaning, though not within the words of the legislature; and others which may fall within the letter, may be contrary to his meaning, though not expressly excepted. These cases thus out of the letter are often said to be within the equity of an act of the legislature; and so cases within the letter are frequently out of the equity. Here, by equity, we mean nothing but the sound interpretation of the law; though the words of the law itself may be too general, too special, or otherwise inaccurate, or defective. These then are the cases, which, as Grotius says, *lex non definit, sed arbitrio boni viri permittit,* (the law does not exactly define, but leaves to the sound discretion of the good man,) in order to find out the true sense and meaning of the law-giver, from every other topic of construction. But there is not a single rule of interpreting laws, whether equitably or strictly, that is not equally used by the judges, in the courts both of law and equity; the construction must, in both, be the same; or, if they differ, it is only as one court of law may also happen to differ from another. Each endeavors to fix and adopt the true sense of the law in question; neither can enlarge, diminish, or alter that sense in a single title. 3d, Again, it has been said that fraud, trust, and accident, are proper and peculiar objects of a court of equity; but every kind of fraud is equally cognizable, and equally adverted to in a court of law; and some frauds are cognizable only there, as fraud in obtaining a devise of land, which is always sent out of the equity courts, to be there determined. Many accidents are also supplied in a court of law, as loss of deeds, mistakes in receipts, or accounts, wrong payments, deaths which make it impossible to perform a condition literally; and a multitude of other contingencies. And many cannot be re-

lied in a court of equity; as if by accident, a devise is ill executed, or a power of leasing omitted in a family settlement.—A technical trust, indeed, created by the limitation of a second writ, was forced into the courts of equity; and this species of trusts, extended by inference and construction, have ever since remained as a kind of peculiarity in those courts. But there are other trusts which are cognizable in a court of law, as deposits, and all manner of bailments, and especially that implied contract, so highly beneficial and useful, of having undertaken to account for money received to another's use, which is the ground of an action on the case, almost as universally remedial as a bill in equity. 4th, Once more, it has been said that a court of equity is not bound by rules, or precedents, but acts from the opinion of the judge, founded on the circumstances of every particular case; whereas the system of our courts of equity is a labored, connected system, governed by established rules, and bound down by precedents, from which they do not depart, although the reason of some of them, may perhaps, be liable to objection. Thus holding the penalty of a bond to be merely a security for the debt and interests, yet considering it sometimes as the debt itself, so that the interest shall not exceed that penalty; distinguishing between a mortgage at five per cent, with a clause of reduction to four, if the interest be regularly paid, and a mortgage at four per cent, with a clause of enlargement to five, if the payment of the interest be deferred; so that the former shall be deemed a conscientious, the latter an unrighteous, bargain; all these, and other cases that might be instances, are plainly rules of positive law, supported only by the reverence that is shewn, and generally very properly shewn, to a series of former determinations, that the rule of property may be uniform and steady. Nay, sometimes a precedent is so strictly followed, that a particular judgment, founded upon special circumstances, gives rise to a general rule. In short, if a court of equity did really act as many ingenious writers have supposed it to do, it would rise above all law, either common or statute. But the systems of jurisprudence in our courts, both of law and equity, are now equally artificial systems, founded in the same principles of justice and positive law, but varied by different usages in the forms, and mode of their proceedings; the one being originally derived, (though much reformed and improved) from the feudal customs, as they prevailed in different ages, in the Saxon and Norman jurisdictions; the other, (but with equal improvements) from the imperial and pontifical formalities introduced by their clerical chancellors. Neither a court of equity, nor a court of law, can vary men's wills or agreements for them; both are to understand them truly, and therefore, both of them, uniformly. One court ought not to extend, nor the other abridge a lawful provision, deliberately

settled by the parties, contrary to its just intent; a court of equity, no more than a court of law, can relieve against a penalty in the nature of stated damages; as a rent of five pounds an acre for ploughing up ancient meadow; nor against a lapse of time, where the time is material to the contract, as in covenants for renewal of leases. Both courts will equitably construe, but neither pretends to control, or change-a lawful stipulation, or agreement. The rules of decision are, in both courts, equally opposite to the subjects of which they take cognizance. Where the subject matter is such as requires to be determined secundum secundum et bonum, (upon principles of justice), as generally in actions upon the case, the judgments of the courts of law are guided by the most liberal equity. In matters of positive-right, both courts must submit to, and follow those ancient and invariable maxims, quae relictæ sunt, et tradita, (which have been left, and handed down to us.) Both follow the law of nations, and collect it from history, and the most approved authors of all countries, where the question is the object of that law; as in the case of the privileges of ambassadors, hostages, or ransom bills. In mercantile transactions, they follow the marine law, and argue from the usages and authorities received in all maritime countries. Where they exercise a concurrent jurisdiction, they both follow the law of the proper forum. In matters originally of ecclesiastical cognizance, they both equally adopt the canon, or imperial law, according to the nature of the subject; and if a question come before either, which is properly the object of a foreign municipal law, they will both receive information of what is the rule of the country, and would both decide accordingly. The difference between them consists, principally, of the different modes of administering justice in each, in the mode of proof, and the mode of relief. As to the mode of proof, where facts, or the leading circumstances, rest only in the knowledge of the party, a court of equity applies itself to his conscience, and purges him, upon oath, with regard to the truth of the transaction; and that being once discovered, the judgment is the same in equity, as it would have been at law. But for want of this discovery at law, the courts of equity have acquired a concurrent jurisdiction with every other court, in all matters of account. As incidental to accounts, they take a concurrent cognizance of the administration of personal assets, consequently of debts, legacies, the distribution of the residue, and the conduct of executors and administrators.—They also take the concurrent jurisdiction of all dealings in partnership, and many other mercantile transactions; and so of bailiffs, receivers, and agents, &c. From the same fruitful source, the compulsive discovery upon oath, the courts of equity have acquired a jurisdiction over almost all matters of fraud; all matters in the private knowledge of the party, which, though

concealed, are binding in conscience; and all judgments at law obtained through such fraud, or concealment; and this, not by impeaching or reversing the judgment itself, but by prohibiting the plaintiff from taking any advantage of a judgment obtained by suppressing the truth, and which, had the same facts appeared on the trial as now are discovered, he would never have obtained at all. With respect to the mode of relief, the want of a more specific remedy than can be obtained in the courts of law, gives a concurrent jurisdiction to the courts of equity in a great variety of cases. To instance in executory agreements, a court of equity will compel them to be carried into strict execution, unless where it is improper or impossible, instead of giving damages for their non-performance. And hence a fiction is established, that what ought to be done shall be considered as being actually done, and shall relate back to the time when it ought to have been done originally. And this fiction is so clearly pursued through all its consequences, that it necessarily branches out into many rules of jurisprudence, which form a certain regular system. So of waste, and other similar injuries, a court of equity takes a concurrent cognizance in order to prevent them by injunction. Over questions that may be tried at law, in a great multiplicity of actions, a court of equity assumes a jurisdiction to prevent the expense and vexation of endless litigations and suits. In various kinds of fraud, it assumes a concurrent jurisdiction, not only for the sake of discovery, but of a more extensive and specific relief, as by setting aside fraudulent deeds, decreeing reconveyances, or directing an absolute conveyance to stand merely as a security, and thus lastly, for the sake of a mere beneficial and complete relief, by decreeing a sale of lands, a court of equity holds plea of all debts, incumbrances and charges that may affect it, or issue thereout. The form of a trust, or second use, gives the courts of equity an exclusive jurisdiction as to the subject matter of all settlements, and devises in that form, and of all the long terms created in the present complicated mode of conveyancing. This is a very ample source of jurisdiction, but the trust is governed by very nearly the same rules as would govern the estate in a court of law if no trustee was interposed; and by a regular positive system established in the courts of equity, the doctrine of trusts is now reduced to as great a certainty as that of legal estates in the courts of common law.—(d.)

Though in some statutes mention is sometimes made of the courts of chancery, king's bench, and common pleas, yet of the first institution of the said courts, or that such courts should be, there is no statute nor law written in the laws of England. And so all the ground and beginning of the said courts depend upon

(d)—1 Bl. Com. p. 439, &c.

the custom of the realm; the which custom is of so high authority, that the said courts, nor their authorities, may not be altered, nor their names changed, without parliament.—(a.)

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**ESCHEAT.**

THIS term denotes an obstruction of the course of descent, and a consequent determination of the tenure, by the death of the tenant, or person last seized, without heirs; in which case, the land naturally results back, by a kind of reversion, to the original owner. An inquest of office, is an inquiry made by the escheator, by virtue of his office, or by writ for that purpose, to ascertain whether A, B, or C, died without heirs; in which case, his lands belong to the state, by escheat. This inquest of office, was devised by law, as an authentic means to give the state its right, by solemn matter of record; without which the state, in general, can neither take, nor part, from any thing. For it is a part of the liberties of the people, and greatly for their safety, that no officer of the government can enter upon, or seize, any man's possessions, upon bare surmises, without the intervention of a jury. If an office be found for the state, it puts it in immediate possession, without the trouble of a formal entry; and the state shall receive all the mesne, or intermediate profits, from the time that its title accrued.—(b.)

In escheats for failure of heirs, the title of the state accrues immediately on the death of the tenant; and the state is entitled to the mesne profits, from the time its title, not its actual possession, accrued.—(c.)

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**ESTATE IN FEE SIMPLE.**

THIS is an estate of inheritance, clear of any condition, or restriction, to particular heirs; and descendible to the heirs general, whether male, or female, lineal, or collateral. The fee simple, or inheritance, of lands, is generally vested, and resides in some person, or other, as, if one grants a lease for twenty-one years, or for one, or two lives, the fee simple still remains

(a)—Doctor and Student, p. 19. (b)—3 Bl. Com. p. 258, &c. (c)—1 Mill, p. 456. City Council of Charleston vs. Lange.

## ESTATE FOR LIFE.

vested in him, and his heirs; and, after the determination of those years, or lives, the land reverts to the grantor, or his heirs. Yet, sometimes, the fee may be in abeyance, that is, in expectation, remembrance, and contemplation, in law, there being no person in esse, in whom it can vest and abide, though the law considers it as always potentially existing, and ready to vest, whenever a proper owner appears. Thus, in a grant to John, for life, and afterwards to the heirs of Richard, the inheritance is plainly neither granted to John nor Richard; nor can it vest in the heirs of Richard till his death; for it is a maxim in law, that no person can be the heir of another, while living, (*nemo est heres viventis:*) It remains, therefore, in waiting during the life of Richard. This is likewise, always the case of a parson of a church, who hath only an estate therein for the term of his life, and the inheritance remains in abeyance: And not only the fee, but the freehold also, may be in abeyance; as, where a parson dies, the freehold of his glebe is in abeyance, until a successor be named, and then it vests in the successor. The word heirs is necessary in the grant, or donation, in order to make a fee, or inheritance.—(a.)

## ESTATE FOR LIFE.

THIS estate is where a lease is made of lands, or tenements, to a man, to hold for the term of his own life, or for that of any other person, or for more lives than one; in any of which cases, he is styled tenant for life, only when he holds the estate by the life of another, he is usually called tenant pur autre vie. Estates for life may be created, not only by the express words before mentioned, but also by a general grant, without deferring, or limiting, any specific estate: As if A, grants to B, the manor of Dale, this makes him tenant for life; for though, as there are no words of inheritance mentioned in the grant, it cannot be construed to be a fee, it shall, however, be construed to be as large an estate, as the words of the donation will bear; and, therefore, an estate for life. Also, such a grant at large, or a grant for term of life generally, shall be construed to be an estate for the life of the grantee, in case the grantor hath authority to make such a grant; for, an estate for a man's own life is more beneficial, and of a higher nature, than for any other life; and the rule of law is, that grants are to be taken most strictly against the grantor, except in the case of the state.

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(a)—2 Bl. Com. p. 106, &c.

But there are some estates for life, which may determine upon future contingencies, before the life, for which they are created, expires. As, if an estate be granted to a woman, during her widowhood, whenever she marries, her estate is absolutely determined and gone. Yet, while it subsists, it is reckoned an estate for life, because, the time for which it will endure, being uncertain, it may, by possibility, last for life.

The incidents to an estate for life are, principally, the following: 1st, Tenant for life, unless restrained by consent, or agreement, may, of common right, take, upon the land demised, reasonable estovers, or botes; that is, necessary wood, or timber, for the farm: for he hath a right to the full enjoyment, and use, of the land, and all its profits, during his estate therein. But he is not permitted to cut down timber, or do other waste upon the premises. 2d, Tenant for life, or his representatives, shall not be prejudiced by any sudden determination of his estate; because such a determination is contingent and uncertain: And it was a maxim in law, that the act of God does no man an injury, (*actus Dei nemini injuriam.*) But if an estate for life be determined by the tenant's own act, as by forfeiture of waste committed, or if a tenant, during widowhood, thinks proper to marry, in these and similar cases, the tenants having thus determined the estate by their own acts, shall not be entitled to take the emblements. The doctrine of emblements extends not only to corn sown, but to roots planted, or other annual artificial profit. Under tenants, or lessees, have the same, nay greater, indulgencies than their lessors, the original tenants for life; the same, for the law of estovers and emblements, with regard to the tenant for life, is also law with regard to his under tenant, who represents him, and stands in his place; and greater, for, in these cases, where tenant for life shall not have the emblements, because the estate is determined by his own act, the exception shall not reach his lessee, who is a third person; as in the case of a woman, who holds during widowhood, her taking husband is her own act, and therefore deprives her of the emblements; but if she leases her estate to an under tenant, who sows the land, and she then marries, this her act shall not deprive the tenant of his emblements; who is a stranger, and could not prevent her.—(a.)

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### ESTATE FOR YEARS.

An estate for years, is a contract for the possession of lands, and tenements, for some determinate period; and every estate,

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(a)—2 Bl. Com. p. 120, &c.

which must expire at a period, certain and prefixed, by whatever words created, is an estate for years. This estate is frequently called a term, because its determination, or continuance, is limited and determined; for every such estate must have a certain beginning, and certain end. That, however, is certain, which can be rendered so; therefore, if a man make a lease to another for so many years, as I. S. shall name, it is a good lease for years; for, though it is at present uncertain, yet when I. S. hath named the years, it is then reduced to a certainty. If no day of commencement is named in the creation of this estate, it begins from the making, or delivery, of the lease. A lease for so many years as I. S. shall live, is void, from the beginning; for it is neither certain, nor can it ever be reduced to certainty, during the continuance of the lease; but a lease for twenty, or more, years, if I. S. shall so long live, is good; for there is a certain period fixed, beyond which it cannot last, though it may determine sooner, on the death of I. S. A lease for any number of years, is only a chattel, and is reckoned part of the personal estate. A lessee for years is not said to be seized, or to have true legal seizin of the lands; nor indeed, does the bare vest any estate in the lessee, but only gives him a right of lease entry on the tenement; which right is called his interest in the term: but, when he has actually so entered, and thereby accepted the grant, the estate is then, and not before, vested in him, and he is possessed, not properly of the land, but of the term of years. The word term, does not merely signify the time specified in the lease, but the estate also, and interest that passes by the lease; and, therefore, the term may expire during the continuance of the time, as by surrender, forfeiture, &c. for which reason, if I grant a town to A, for the term of three years, and after the expiration of the said term, to B, for six years, and A, surrenders, or forfeits his lease, at the end of one year, B's interest shall immediately take effect, but if the remainder had been to B, from and after the expiration of the said three years, or from, and after the expiration of the said time, in this case B's interest will not commence 'till the time is fully elapsed, whatever may become of A's term. Tenant for years hath, incident to, and inseparable from, his estate, unless by special agreement, the same estovers, as tenant for life; that is to say, as much wood, or timber, as may be necessary for the full enjoyment of the tenement, or farm.—(a.)

If a tenant, or other person, voluntarily, and without consulting the owner, put repairs to the house of another, he cannot, afterwards, make a charge of it against the owner, nor carry away such materials as were made use of, particularly if they were so fastened as to become part of the freehold.—(b.)

(a)—2 Bl. Com. p. 140. (b)—2 Mill, p. 348. Caldwell vs. Ennas.

## ESTATE AT WILL.

An estate at will, is where lands and tenements are let by one man, to another, to have and to hold at the will of the lessor; and the tenant, by force of this lease, obtains possession. Such tenant hath no certain indefeasible estate; nothing that can be assigned by him to any other, because the lessor may determine his will, and put him out whenever he pleases. But every estate at will, is at the will of both parties, landlord and tenant, so that either of them may determine his will, and quit his connexions with the other, at his own pleasure. Yet this must be understood with some restriction. For, if the tenant at will sows the land, and the landlord, before the corn is ripe, or before it is reaped, puts him out; yet the tenant shall have the emblements, and free ingress, egress, and regress, to cut, and carry away the profits; and this, for the same reason, upon which all the cases of emblements turn, viz: the point of uncertainty, since the tenant could not possibly know when his landlord would determine his will, and therefore could make no provision against it: And therefore, having sown the land, which is for the good of the public, upon a reasonable presumption, the law will not suffer him to be a loser by it; but it is otherwise, where the tenant himself determines the will, for in this case, the landlord shall have the profits of the land. Besides the express determination of the lessor's will; by declaring that the lessee shall hold no longer, of which notice must be given to the lessee, the execution of any act of ownership by the lessor, as entering upon the premises, and cutting timber, taking a distress for rent and impounding it thereon, or making a deed, or lease, for years, of the lands, to commence immediately; any act of desertion by the lessee, as assigning his estate to another, or committing waste; or, which is equal to all the rest, the death of either lessor, or lessee, puts an end to, or determines this estate at will. The law, however, is careful that no sudden determination of the will, by one party, shall tend to the manifest and unforeseen prejudice of the other. This appears in the case of emblements, before mentioned; and, by a parity of reason, the lessee, after the determination of the lessor's will, shall have reasonable ingress and egress to fetch away his goods and utensils. And, if rent be payable quarterly, or half yearly, and the lessee determines the will, the rent shall be paid to the end of the current quarter, or half year. And, upon the same principle, courts of law have, of late years, leaned, as much as possible, against construing demises, where no certain term is mentioned, to be tenancies at will; but have rather

## 476 ESTATES ON CONDITION EXPRESSED.

held them to be tenancies from year to year, so long as both parties please, especially where an annual rent is reserved.—(a.)

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## ESTATE AT SUFFERANCE.

An estate at sufferance is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all; as if a man takes a lease for a year, and after the year is expired, continues to hold the premises without any fresh leave from the owner of the estate; or, if a man make a lease at will, and dies, the estate at will is thereby determined; but if the tenant continues possession, he is tenant at sufferance. This estate may be destroyed whenever the true owner shall make an actual entry on the lands, and oust the tenant; for, before entry, he cannot maintain an action of trespass against the tenant by sufferance, as he might against a stranger; and the reason is, because, the tenant being once in by a lawful title, the law, (which presumes no wrong in any man) will suppose him to continue upon a title equally lawful, unless the owner of the land, by public and avowed act, such as entry is, will declare his continuance to be tortious, or, in common language, wrongful.—(b.)

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## ESTATE ON CONDITION EXPRESSED.

This is where an estate is created either in fee simple, or otherwise, with an express qualification annexed, whereby the estate granted, shall either commence, be enlarged, or be defeated upon the performance, or breach, of such qualification, or condition. These conditions, therefore, are either precedent, or subsequent. Thus, if an estate for life be limited to A, upon marriage with B, the marriage is a precedent condition; and 'till that happens, no estate vests in A; or, if a man grant to his lessee for years, then upon payment of a hundred marks within the time, he shall have the fee: this also, is a condition precedent, and the fee simple passeth not, 'till the hundred marks be paid. But, if a man grant an estate in fee simple, reserving to himself and his heirs, a certain rent, and that if,

(a)—2 Bl. Com. p. 145. (b)—Ibid. p. 150.

such rent be not paid at the times limited, it shall be lawful for him and his heirs to re-enter and avoid the estate: in this case, the grantee and his heirs have an estate upon condition subsequent, which is defeasible, if the condition be not strictly performed. A distinction, however, is made between a condition in-deed, and a limitation, which Lyttleton denominates also a condition in law. For when an estate is so expressly confined and limited, by the words of its creation, that it cannot endure for any longer time, than 'till the contingency happens, upon which the estate is to fail, this is denominated a limitation; as where land is granted to a man so long as he is parson of Dale, or while he continues unmarried, or, until out of the rents and profits, he shall have made five hundred dollars, and the like. In such case, the estate determines as soon as the contingency happens, (when he ceases to be the parson of Dale, &c.) and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. But when it is, strictly speaking, upon a condition in deed, as if granted expressly upon condition to be void upon the payment of fifty dollars, by the grantor, or so that the grantee continues unmarried, or provided he goes to York, &c. the law permits it to endure beyond the time, when such contingency happens, unless the grantee, or his heirs, or assigns, take advantage of the breach of the condition, and make either an entry, or a claim, to avoid the estate. Yet, though strict words of condition be used in the creation of the estate, if, on breach of the condition, the estate be limited over to a third person, and does not immediately revert to the grantor, or his representatives, as if an estate be granted by A, to B, on condition that, within two years, B intermarry with C, and on failure thereof, then to D, and his heirs, this the law construes to be a limitation, and not a condition; because, if it were a condition, then, upon the breach thereof, only A, or his representatives, could avoid the estate by entry, and so D's remainder might be defeated by their neglecting to enter; but when it was a limitation, the estate of B determines, and that of D commences, and he may enter on the lands the instant that the failure happens. So also, if a man, by his will, divides land to his heirs at law, on condition that he pays a sum of money, and for non-payment, devises it over, this shall be considered as a limitation; otherwise no advantage could be taken of the non-payment, for none but the heir himself could have entered for a breach of the condition. In all these instances of limitations, or conditions subsequent, it is to be observed, that so long as the condition either expressed, or implied, remains unbroken, the grantee may have an estate of freehold: Provided, that the estate, upon which such a condition is annexed, be, in itself, of a freehold nature; as if the original grant express an estate of

478 ESTATE ON CONDITION IMPLIED.

inheritance, or for life, or no estate at all, which is constructively an estate for life; for the breach of these conditions being contingent and uncertain, this uncertainty preserves the freehold; because the estate, supposing the condition to remain unbroken, was capable to last forever, or at least for the life of the tenant. Express conditions, if they be impossible at the time of their creation, or afterwards become impossible by the act of God, or the act of the grantor himself; or if they be contrary to law, or repugnant to the nature of the estate, are void. In any of which cases, if they be conditions subsequent, that is, to be performed after the estate is vested, the estate shall become absolute in the tenant: as if a grant be made to a man in fee simple, on condition, that, unless he goes to Rome in twenty-four hours, or unless he marries with Jane S. by such a day, within which time the woman dies, or the grantor marries her himself, or unless he kills another, or in case he aliens in fee; that then, and in any of such cases, the estate shall be vacated, and determine; here the condition is void, and the estate made absolute in the grantee; for he hath, by the grant, the estate vested in him, which shall not be defeated afterwards, by a condition either impossible, illegal, or repugnant. But, if the condition be precedent, as a grant to a man, that, if he kills another, &c. he shall have an estate in fee, here the void condition being precedent, the estate, which depends thereon, is also void.—(a.)

ESTATE ON CONDITION IMPLIED.

An estate on condition implied, in law, is where a grant of an estate has a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words: as, if a grant be made to a man, of an office, generally, without adding other words, the law tacitly annexes hereto, a condition that the grantee shall duly execute his office; on breach of which condition, it is lawful for the grantor, or his heirs, to oust him, and grant it to another person. For an office, either public, or private, may be forfeited by mis-user, or non-user, both of which are breaches of this implied condition. 1st, By mis-user, or abuse; as if a judge takes a bribe, or a park-keeper kills a deer without authority. 2d, By non-user, or neglect; which, in public offices, that concern the administration of justice, or the commonwealth, is, of itself, a direct and immediate cause of forfeiture; but non-user of a private office is no cause of forfeiture.

(a)—2 Bl. Com. p. 152, &c.

Unless some special damages is proved. For, in the one case, delay must necessarily be occasioned in the affairs of the public, which require constant attention; but private officers not requiring so regular and unremitting a service, the temporary neglect of them is not necessarily productive of mischief; upon which account, some special loss must be proved in order to value these.—(a.)

### ESTATE IN REMAINDER.

A **REMAINDER** is an estate limited to take effect, and be enjoyed, after another estate is determined; as, if a man, seized in fee simple, grant the lands to A, for twenty years, or for life, and after the determination of the said term, or the death of tenant for life, then to B, and his heirs in fee. Remainders are either vested, or contingent. Vested remainders, or remainders executed, whereby a present interest passes to the party, though to be enjoyed at some future time, are where the estate is invariably fixed to remain to a determinate person, after the particular estate is spent; as if A be tenant for twenty years, remainder to B in fee; here B's is a vested remainder, which nothing can defeat or set aside. A contingent remainder, whereby no present interest passes, is where the estate in remainder is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the remainder never take effect: as if A be tenant for life, with remainder to B's eldest son, then unborn, this is a contingent remainder; for it is uncertain whether B will have a son, or not; but the instant that a son is born, the remainder is no longer contingent, but vested. And this species of contingent remainder to a person not in being, must be limited to some one, that may, by common possibility, be in esse at, or before, the determination of the particular estate. As if an estate be made to A, for life, remainder to the heirs of B; here, if B dies first, the remainder immediately vests in his heir, who will be entitled to the land on the death of A. In this case, B's dying before A, is a common possibility, and therefore allowed in law; but, generally, whenever the possibility is very remote, or improbable, the remainder is void. A limitation of a remainder to a bastard, before it is born, is not good; for although the law allow the possibility of having bastards, it presumes it to be a very remote

(a)—*Bl. Com. p. 152, &c.*

## ESTATE IN REVERSION.

or improbable contingency. A remainder may also be contingent, where the person, to whom it is limited, is fixed and certain, but the event, upon which it is to take effect, is vague and uncertain: as where land is given to A, for life, and in case B survives him, then with remainder to B, in fee; here B is a person certain, but the remainder to him is contingent, depending upon a dubious event, the uncertainty of his surviving A. During the joint lives of A and B, it is contingent; and if A dies first, the remainder to B becomes vested.—(a.)

By the rules of the ancient common law, there could be no future property to take place in expectancy, created in personal goods and chattels; because, being things transitory and by many accidents subject to be lost, destroyed, or otherwise impaired; and the exigencies of trade also requiring a frequent circulation thereof, it would occasion perpetual suits, and quarrels, and put a stop to the freedom of commerce, if such limitation in remainder were generally allowed. But yet, in last wills and testaments, such limitations of personal goods and chattels in remainder after a bequest for life, were permitted; though originally, that indulgence was only shown, where merely the use of the goods, and not the goods themselves, was given to the first legatee: the property being supposed to continue all the time in the executor of the devisee. But now that distinction is disregarded, and therefore, if a man either by deed, or will, limits his books, or furniture, to A, for life, with remainder over to B, this remainder is good. But where an estate-tail in things personal is given to the first, or any subsequent possessor, it vests in him the total property, and no remainder over shall be permitted on such limitation; for this, if allowed, would tend to a perpetuity, and therefore, the law vests in him at once, the entire dominion of the goods.—(b.)

Estate-tail are either general, or special. Tail general, is where land is given to one, and the heirs of his body together, generally. Tail special, is where the gift is restricted to certain heirs of the donee's body; as where land is given to a man and the heirs of his body on Mary, his now wife, to be together.—(c.)

## ESTATE IN REVERSION.

THIS is the residue of an estate left in the grantor, to commence in possession, after the determination of some particular

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(a)—2 Bl. Com. p. 164, &c. (b)—Ibid. p. 399. (c)—Ibid. p. 122.

estate granted out by him; as if there be a gift in tail, the reversion of the fee is without any special reservation, vested in the dower by act of law. And so also, the reversion after an estate for life, years, or at will, continues in the lessor. A reversion is never created by deed, or writing, but arises from construction of law; a remainder can never be limited, unless by deed or devise; but both are equally transferable when actually vested.—(l.)

### ESTATE IN JOINT TENANCY.

An estate in joint tenancy is, where land and tenements are granted to two or more persons; and this estate can only arise by purchase or grant, that is by the act of the parties, and never by the mere act of law. If an estate be given to a plurality of persons, without adding any restrictive, exclusive, or explanatory words, as if an estate be granted to A. and B. and their heirs, this makes them immediately joint tenants in fee of the lands. If two joint tenants let a verbal lease of their lands, reserving rent to be paid to one of them, it shall enure to both, in respect to the joint reversion. If their lessee surrenders his lease to one of them, it shall also enure to both, because of the privity or relation of their estate. For the same reason, the entry or re-entry of one joint tenant is as effectual in law as if it was the act of both. In all actions also, relating to their joint estate, one joint tenant cannot sue, or be sued, without joining the other.—(m.) Things personal may also be held in joint tenancy, as if a horse, or other personal chattel, be given to two or more absolutely, they are joint tenants thereof.—(n.)

### ESTATE IN COMMON.

TENANTS in common are such as hold by several and distinct titles, but by unity of possession. This tenancy therefore happens, where there is a unity of possession merely, but perhaps an entire disunion of interest, of title, and of time. And whenever an estate in joint tenancy, or coparcenary, is dissolved, so

(l)—*2 Bl. Com. p. 176.* (m)—*Ibid. p. 179, &c.* (n)—*Ibid. p. 399.*

## EVIDENCE.

that there be no partition made, but the unity of possession continues, it is turned into a tenancy in common. So, likewise, if there be a grant to two men, or two women, and the heirs of their bodies, here the grantees shall be joint tenants of the life estate, but they shall have several inheritances, because they cannot possibly have one heir of their two bodies, as might have been the case, had the limitation been to a man and woman, and the heirs of their bodies begotten; and in this and the like cases, their heirs shall be tenants in common. A tenancy in common may also be created by express limitation in a deed, but here, care must be taken not to insert words that imply a joint estate. If one tenant in common actually turns another out of possession, an action of ejectment will lie against him; but it is not necessary that tenants in common shall join or be joined in actions, except in a case where some entire and indivisible thing is to be recovered.—(a.) Things personal may also belong to their owners in common as well as real estates. (b.)

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## ESTRAY.

ANY beasts may be estrays, that are by nature tame, or reclaimable, and in which there is a valuable property, as sheep, oxen, swine, and horses; which are, in general, called cattle. Animals, upon which the law sets no value, as a dog or cat, and such as are wild, cannot be considered as estrays. He that takes an stray is bound, so long as he keeps it, to find it in provisions, and preserve it from damages, and may not use it by way of labor, but is liable to an action for so doing. Yet he may milk a cow or the like, for that tends to the preservation, and is for the benefit of the animal. And if the owner claims them within the time prescribed by law, he must pay the charges of finding and keeping them.—(c.)

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## EVIDENCE

SIGNIFIES that which demonstrates, makes clear, or ascertains the truth of the very fact, or point in issue, either on the one side, or on the other; and no evidence ought to be admitted

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(a)—2 Bl. Com. p. 191, &c. (b)—Ibid. p. 39. (c)—1 Bl. Com. pp. 200-9.  
See Ante, Title Estray, Sec. v.

to any other point. Therefore, upon an action of debt, when the defendant denies his bond by the plea of non est factum, (it is not my deed); and the issue is, whether it be the defendant's deed or not, he cannot give a release of this bond in evidence, for that does not destroy the bond, and therefore does not prove the issue which he has chosen to rely upon, viz. that the bond has no existence.

Evidence is either written, or parol, that is by word of mouth. Written evidence consists 1st, of record; and 2d, of ancient deeds of thirty years standing, which prove themselves; but 3d, modern deeds; and 4th, other writings must be attested and verified by parol evidence of witnesses; and the one general rule that runs through all the doctrine of trials is this, that the best evidence the nature of the case will admit of, shall always be required, if possible to be had; but if not possible, then the best evidence that can be had shall be allowed. For if it be found that there is any better evidence existing than is produced, the very not producing of it is a presumption that it would have detected some falsehood, that at present is concealed. Thus, in order to prove a lease for years, nothing else shall be admitted but the very deed of lease itself, if in being; but if that be positively proved to be burnt or destroyed, (not relying on any loose negative, as that it cannot be found or the like,) then an attested copy may be produced, or parol evidence be given of its contents. So no evidence of a discourse with another will be admitted, but the man himself must be produced. Yet, in some cases, as in proof of any general customs, or in matters of common tradition, or repute, the courts admit of hearsay evidence, or an account of what persons deceased have declared in their lifetimes; but such evidence will not be received of any particular facts. All persons, of whatever religion or country, that have the use of their reason, are to be received and examined as witnesses, except such as are infamous, or such as are interested in the event of the cause. All others are competent witnesses, though the jury, from other circumstances, will judge of their credibility. Infamous persons are such as have been convicted of treason, felony, perjury, or conspiracy; or, for some infamous offence, have received judgment of the pillory, or to be branded, whipped, or stigmatised. Interested witnesses may be examined upon a voir dire, if suspected to be secretly concerned in the event, or their interest may be proved in court, which last is the only method of supporting an objection to the former class, for no man is to be examined to prove his own infamy; and no counsel, attorney, or other person, entrusted with the secrets of the cause by the party himself, shall be compelled, or perhaps allowed, to give evidence of such conversation, or matters of privacy, as came to his knowledge by virtue of such trust and confidence: but he may be examined as to

## EVIDENCE.

more matters of fact, as the execution of a deed, or the like, which might have come to his knowledge without being entrusted in the cause. One witness, if credible, is generally sufficient evidence to a jury of any single fact, though undoubtedly the concurrence of two or more corroborates the proof; and to avoid all temptations to perjury, it is an invariable rule, that no person shall be allowed to be a witness in his own case. Positive proof is always required, where, from the nature of the case, it appears it might possibly have been had; but next to positive proof, circumstantial evidence, or the doctrine of presumptions, must take place; for, when the fact itself cannot be demonstratively evinced, that which comes nearest to the proof of the fact, is the proof of such circumstances, which either necessarily or usually attend such facts, and those are called presumptions, which are to be relied upon till the contrary be actually proved. Violent presumption is many times equal to full proof; for there those circumstances appear which necessarily attend the fact; as if a landlord sues for rent due at Michaelmas, 1754, and the tenant cannot prove the payment, but produces an acquittance for rent due at a subsequent time, in full of all demands: this is a violent presumption of his having paid the former rent, and is equivalent to full proof, for though the actual payment is not proved, yet the acquittance in full of all demands is proved, which could not be without such payment; and it therefore induces so forcible a presumption, that no proof shall be admitted to the contrary. Probable presumption arising from such circumstances as usually attend the fact, hath also its due weight; as if in a suit for rent due in 1784, the tenant proves the payment of the rent due in 1755, this will prevail to exonerate the tenant, unless it be clearly shewn that the rent of 1754 was retained for some special reason, or that there was some fraud or mistake; for otherwise, it will be presumed to have been paid before that of 1755, as it is most usual to receive first the rents of longest standing.

The oath administered to the witness, is not only that which he deposes shall be true, but that he shall also depose the whole truth; so that he is not to conceal any part of what he knows, whether interrogated particularly to that point or not. As to such evidence as the jury may have in their own consciences, by their private knowledge of facts, the rule which now universally obtains is, that he shall be sworn as a witness, and give evidence publicly in court.—(d.)

If a witness served with a subpoena, do not attend, the court will grant an attachment against him; but he ought to have reasonable notice of the trial, to be served personally, and reasonable expenses tendered him.—(e.)

(d)—3 Bl. Com. p. 367, &c. (e)—Jacob's Law Dictionary.

The admission of book entries of any description, as evidence, is not authorized by any express act of the legislature of this state; but as far back as it is possible to trace the subject, those of merchants and mechanics of every description, which have been fairly and regularly kept as daily memoranda of their transactions, have been admitted as evidence of goods, or other articles delivered. It originated, probably, in the necessity of resorting to this mode of proof as early as the custom of vending goods and wares on a credit. It appears from the preamble to the statute of 7th James 1. c. 12, made of force in this state in 1712, (g.) the shop-books of men of trade, and hand-craftsmen, were then admitted as evidence; and the act of September, 1721, (h.) expressly recites, that the books of accounts of merchants, shop-keepers, and others, were received as evidence under the then existing laws. In the case of Slade vs. Teasdale, (i) the books of a carpenter were admitted. And in the case of Lamb vs. Hart, (k) it is said that the regular books of a mechanic of any description are admissible. The same reasons apply to a printer, who is in the daily habit of furnishing his newspaper, and publishing advertisements without present remuneration. This description of evidence, however, is perhaps the weakest of all others, particularly when the entries are made by the party himself, and ought never to be allowed where there is any other in the power of the party to produce. (m.) The regular shop-books of a mechanic, as well as the merchant, are admissible to prove the delivery of specific articles in the line of his business; and those of the mechanic are admissible to prove the performance of a particular job of work in the course of his trade, and of articles furnished. To extend this rule further, would open a door for incalculable fraud and mischief, and would, in the course of time, wholly subvert the rule of law, that a party shall not be a witness in his own cause. (n) The testimony of a witness, who swears positively from written memoranda, though they do not recall to his memory a recollection of the facts, is admissible, and such testimony is better evidence than an adventitious and unaided recollection. (o) The admissions of a defendant are always considered the best evidence against him, and they need not be auricular. Conversations, which have passed in the hearing of the party, respecting the matters in difference, and were not contradicted by him, are good evidence of his admission of the facts alleged.—(p.)

(g)—P. L. p. 74. (h)—Ibid. p. 116 (i)—2 Bay, 172. (k)—Ibid. 362.—  
(m)—Thomas vs. Adm'r of Best 1 Nott & McCord, 186 (n)—Administrator of Lynch vs. Peirce, 1 Nott & McCord, p 131 (o)—Person and others, vs. Wightman, 1 Mill, 344. (p)—Ibid. p. 300, Adm'r. of Pryer vs. Miller.

Parol evidence is admissible to establish any fact, except when written evidence is expressly required by law; such, for instance, as the cases within the statute of frauds.—(p.)

Evidence that a person practised with success and reputation for several years, is per se, sufficient evidence of his being a physician.—(q.)

Every person is entitled to be a witness, unless excluded by law for the following incapacities: 1st, on account of interest; 2d, on account of standing in some relation to the parties in the cause; 3d, on account of crimes, which destroy his credit; 4th, on account of want of discretion.

The strict notion of objection to a witness, on the ground of interest, is upon the voir dire, whether he be to gain or lose by the event of the cause; for a direct interest in the event, is a decisive objection to his competence; as in case of an informer on a penal statute, in which case the same person cannot be informer and witness, because he is entitled to a part of the penalty, and so is interested in the event, and that shall be deemed equally an interest, which exempts the witness from a charge or loss, which he may incur on the event of the suit, as much as the prospect of positive advantage. Therefore a prœsumptum anni, by which an infant sues, cannot be a witness in the cause, for he is liable to the costs; but the interest, to render a witness incompetent, must be a certain benefit or advantage, arising to him from the event of the cause, or a certain charge or loss, to which he may be liable. Therefore it was decided that a grantee, when he appeared to be a bare trustee, was a good witness to prove the execution of the deed to himself, for a naked trust shall not exclude a man from being a witness; so that a future or contingent interest, or a future and contingent loss which he may derive, or suffer from the event of the cause, shall not render him incompetent; and, on the same footing, where the interest is very remote, it shall not disqualify the witness; but though the witness may not have any interest in the cause, wherein he is called as a witness, yet, if in its event, he may be ultimately benefitted, he shall be inadmissible; as, for example, if both party and witness claim any matter under the same title, or in the same right; or, if the determination of the cause depending, may perhaps prevent a suit against the witness. If the witness thinks himself interested, that is, that a benefit will arise to him from his testimony, though in strictness of law, he has no right to such benefit, he should not be admitted as a witness; and it is a rule, that no person who has signed a negotiable paper shall be permitted to give testimony to invalidate it; for every man who is a party to any instrument, gives a credit

(p)—2 Mill, p. 89, Commissioners of the Treasury vs. Allen. (q)—*ibid.*—p. 237, Brown vs. Mings.

To it, and by such means he might discharge himself; and this is the case, though he has no immediate interest in the event of the suit in which he is called. Therefore, when in debt on a bond, the defendant pleaded usury, it was proved that the bond had been given in consideration of the delivering up of two promissory notes, which had been indorsed to Sutton, the bankrupt, one of the indorsers on which was a person of the name of Davenport Sedley: to prove that the consideration of the notes was usurious, the defendant called Davenport Sedley, but he was rejected as an incompetent witness, on the ground, that he came to impeach an instrument, on which his name appeared, though it was admitted, that in point of interest, he had none, or that it was rather against his interest; as if the bond was established, the notes upon which his name appeared, were at an end. But where a person is uninterested in the immediate question, that is, at all events, liable himself, he may be called to impeach that instrument, upon which his name appears, as between other parties. Therefore, where the plaintiff declared as indorsee of a promissory note drawn by Foster Charlton, payable to the defendant, dated the 13th of June, 1775; the defendant insisted that the date of the note had been altered from the 3d to the 13th, and to prove it, called Foster Charlton: Lord Mansfield admitted him, as at all events he was liable to pay the note. So neither shall a person be allowed to give testimony as to the illegality of a transaction, in which a personal trust or confidence has been placed in him. If an action is brought against one defendant for a cause of action, together with others, those other persons may be witnesses for the defendant; but otherwise, where they have been made parties to the suit. But though interest is thus a complete objection to the competence of a witness, yet it is to be taken with some exceptions, in which the objection will go to his credibility, and not to his competence: as 1st, in criminal prosecutions, a party interested may be a witness: 2d, persons interested, who are declared by statute to be legal witnesses, notwithstanding the interest; or those whom the policy of statutes giving them an interest, requires to be so admitted; 3d, a third case, in which a person interested may be a witness, is from necessity; where a matter is privately transacted, and no other evidence could reasonably be expected: 4th, a fourth case, in which a witness interested may be admitted to give his evidence, is grounded on the usage of trade, and the usual mode of business: 5th, a fifth case, in which an interested person may be a witness is, where the party has become interested by his own act, after the party, who calls him as a witness, has a right to his evidence: 6th, a party interested may be a witness, where his interest is very remote, or trifling: 7th, and lastly, however a person may be interested, if before he gives his testimony, he parts with his in-

terest by a release, or otherwise, he is restored to his competency.

Persons inadmissible as witnesses from situation, as standing in some relation to the parties in the cause, are: 1st, counsel and attorneys: 2d, husband and wife: 1st, counsel and attorneys ought not to be permitted to discover the secrets of their clients, though they offer themselves for that purpose; and this is the privilege of the client, not of the counsel or attorney, for it is contrary to the policy of the law to permit any person to betray a secret with which the law has intrusted him. But the rule laid down is confined to cases only, in which the facts to which the counsel or attorney is called, have been communicated to him in the course of business, in instructing him professionally respecting the cause; and consequently, a counsel or attorney may be called to prove any fact or matter which they knew before their retainer; for as to that matter, they are in the same situation with other persons; or they may be called to prove a fact of their own knowledge, of which they might have had knowledge, without being counsel or attorney in the cause; and this privilege is strictly confined to attorneys and counsel in a cause, and cannot be extended to others, though professionally and confidentially employed, as physicians, &c.

Husband and wife being one person in the consideration of the law, and their interests absolutely the same, they cannot be witnesses for each other, nor against each other, on account of its being likely to create disputes, and so against the policy of marriage. But this rule admits of some exceptions: as 1st, in cases of high treason, the wife may be a witness against her husband, because the tie of allegiance is more obligatory than any other: 2d, on an indictment for marrying a second wife, the first being living; the first wife cannot be a witness, but the second may, for the second marriage is void: 3d, in cases of personal torts by the husband against the wife, she may be admitted as a witness against him, and vice versa; but no other relation shall exclude persons from being witnesses, though their situation may go somewhat to their credit.

Persons infamous on account of crimes, are such as have been convicted of treason, felony, and what is denominated crimer falsi, as perjury, forgery, conspiracy, and the like; for where a man is convicted of these gloomy crimes, his oath is of no weight. The common punishment that marks the crimer falsi, is being set in the pillory; but a general pardon restores the competence of a witness of this description under the following distinctions: Where the disability of being a witness is part of the judgment itself, there the pardon shall not remove it; but where the disability is a consequence of the judgment, in such case the pardon shall restore the person to his competence. But a pardon by act of the legislature will restore in all cases; and the burning in the hand amounts to a statute pardon.

Persons infamous on account of their religious tenets or principles, are rejected, on the ground, that as it is necessary to have recourse to the sanction of an oath, persons denying the being, or attributes, of the Deity, must consider themselves as not bound by the obligation of an oath, and therefore are not credible.—Therefore, where, on an indictment for horse-stealing, a witness was produced, and being examined, said that he had heard that there was a God; and believed that those persons who told lies would come to the gallows; but acknowledged that he had never learned the catechism, was altogether ignorant of the obligation of an oath, a future state of rewards and punishments, the existence of another world, or what became of wicked people after death, the court rejected him as incompetent. But it is not necessary that a person should profess the Christian religion; Jews are daily admitted; so are persons of other religions; it is sufficient if they profess a religion and belief in the Deity, which will be a tie on them to attest the truth.

Persons inadmissible as witnesses from want of discretion, are such as are non compotes, idiots, madmen, and children, whose age incapacitates them from discriminating between right and wrong; and with regard to children, there seems to be no time fixed, wherein they are excluded from giving evidence; but it will depend in a great measure on the sense and understanding of the child, as it shall appear on examination.

It is a general rule that a witness cannot be asked any question, the answering of which may oblige him to accuse himself of a crime, or subject him to penalties or punishment. But where an application was made to the court to bail the defendant, who was charged with grand larceny, one of the bail was asked if he had never stood in the pillory. This question was objected to as tending to criminate him, but the court overruled the objection, as the answer could not subject him to any punishment. He refused to answer the question, and was rejected.

The books of third persons are good evidence as to any transaction to which they immediately refer. In an action concerning tithes, the books of a rector or vicar who was dead, was admitted as good evidence; for, as he had no interest but for life, it could not be presumed that he would make any entries that were false merely for the benefit of his successor, who might be an utter stranger to him, and therefore not like the owner of an estate, who might be presumed to have a partiality for his own family who were to succeed him. So in this case, where the question was, if the mortgage money was really paid; a scrivener's book of accounts, (the scrivener being dead,) was helden to be good evidence of payment. So the party's own books are good evidence against him.

A receipt is *prima facie*, and presumptive, evidence, to charge the party with so much money received; but it is not conclusive.

## EVIDENCE.

evidence; for, where the defendant, together with one Avarne, signed a receipt, acknowledging to have received the sum of £75*l.*, being the consideration money of an annuity, the annuity afterwards being void, and an action brought for the money, it was held that the defendant might shew that he was only the surety, and had not received any part of the consideration money, notwithstanding the receipt, and having done so, he had judgment.

The Gazette is good evidence, and in general, sufficient notice as to matters published in it; but where in an action for goods sold and delivered against three partners, one let judgment go by default, and two of them set up a defence that the partnership had been dissolved before the goods were furnished, which had been delivered to the third, and that notice of the dissolution of the partnership had been inserted in the London Gazette, Lord Kenyon said that that alone was not sufficient, but that particular notice, by letter or message, should be given beside to all persons who had any transactions with the firm.

A letter from an agent, acknowledging the receipt of goods, is good evidence against the buyer. The following rules under which evidence is to be given, have been adopted by the courts: 1st, in every issue, the affirmative is to be proved. This rule is founded on the nature of things, as a negative cannot regularly be proved, and therefore it is sufficient to deny what is affirmed, till it be proved; but when the affirmative is proved, the other party may then contest it by opposite proofs, for that is not properly the proof of a negative, but of a proposition totally inconsistent with what is affirmed. But to this rule there is an exception of such cases, where the law presumes the affirmative; in which case, the other party is put on proof to impeach it. As the law presumes that every man does his duty, till the contrary is proved, therefore in an information against Lord Halifax, for refusing to deliver up the rolls of the auditor of the exchequer, the court put the plaintiff upon proving that he had not delivered them up: 2d, the best evidence which the nature of the thing admits, and is capable of, must always be given. But this rule consists of two parts; 1st, it must be the best evidence; 2d, it must be in the party's possession or favor, for if not, it is not his default that it is not produced. Therefore when any deed or other instrument appears to be lost, without any fault in the party; in such case, a copy is good evidence; and no parol evidence of any fact or agreement shall be admitted, where there is written evidence of such fact, for written evidence speaks for itself, is liable to no perversion or misconstruction, and is more accurate than memory can be, which is uncertain and fallible. It is therefore the constant practice in case a witness mentions any matter which has been reduced into writing to call for the writing; and if not produced, or not proved to be

lost, to reject evidence of such matter or fact. So, upon the same ground, and under the statute of frauds, where any written evidence is produced, parol evidence is never admitted to add to or vary it in any respect. But where there is a doubt on the face of the words respecting the matter to which they refer, in such case, parol evidence may be admitted to ascertain such facts; and this ambiguity or doubt of the construction, is divided into ambiguites latens, et patens. Ambiguites latens is that which seems certain, and without doubt, for any thing that appears on the face of the deed or instrument; but there is some collateral matter out of the deed or instrument, which creates the ambiguity. Where the ambiguity is of this nature, parol evidence is admissible, for the instrument itself being certain, but the doubt arising from something extrinsic, extrinsic matter should be admitted, particularly as it fortifies and gives effect to the written evidence, as where the testatrix devised her estate to her cousin, John Cleire, and there was both father and son of that name, it was held, that parol evidence was admissible to prove that the son of that name was the person meant. Ambiguites patens, is that which appears on the face of the deed or instrument, and is in fact an omission, and can therefore never be supplied by an averment; for that in effect would be to make that pass without deed, which the law appoints shall not pass without deed; as where there was a devise in a will, but the deviser's name was totally omitted; it was held that parol evidence was inadmissible to shew who was meant, for that would be to add to a written instrument. Under this rule, of the best evidence being always required, copies of any instruments or proceedings are not admissible evidence, except in some particular cases, as the originals are the best evidence. In the following cases, copies are admissible: 1st, if the original is proved to be lost or destroyed, for then, in fact, the copy is the best evidence: 2d, if the original is proved to be in the hands of the opposite party; in such case, a copy may be given in evidence, if such party refuses to produce it upon notice given to do it; or in such case, parol evidence may be given of its contents; and there is no difference in civil and criminal cases, or penal actions, as to the necessity that a party is under, to produce evidence against himself, on his receiving notice to do it. 3d, a copy is admissible evidence, where the original is of a public nature; for, wherever the original is of a public nature, and would be evidence, if produced, an immediate sworn copy thereof is evidence: 4th, a fourth case in which copies are evidence is, where they are made so by statute; but copies are to be given in evidence under the following restrictions: if a copy of a deed, or such like instrument, is offered in evidence, on the ground of the original being lost, it must be proved by a witness who compared it with the original, other-

## EVIDENCE.

wise there would be no proof of the truth of the copy, or that it had any relation to the deed; 2d, where a copy is in like manner offered in evidence, sufficient probability must be shewn to the court to satisfy them that the original was genuine, as well as that it was lost, before the party shall be permitted to read it. But, notwithstanding the rule is thus generally laid down, that the best evidence the nature of the case will admit of shall always be required; yet in some instances the courts have admitted an inferior species of evidence, as in this case, which was an action against an officer of the post-office for interfering in an election, the court were of opinion that it was sufficient for the plaintiff to shew the defendant's acting as such, without bringing proof of his being appointed by the post-office.

It is a general rule that hearsay is no evidence. But, where positive proof is not to be had, the declarations of persons uninterested, and who are then dead, are admissible, as 1st, in questions concerning legitimacy; for, it is the practice to admit evidence of what the parents have been heard to say respecting their being married or not; for the presumption arising from co-habitation is strengthened or destroyed by such declarations, which are not to be given in evidence directly, but as reasons for the witness's belief, one way or the other.; so hearsay is good evidence in cases of pedigree, as to prove who was a man's grand-father, what children he had, when he married, &c. of which it is reasonable to presume that better evidence could not be had. Hearsay is good evidence to prove the death of any relation beyond sea, as a person living to prove that he had heard in the family that such a person of it had died abroad, and that it was believed in the family, and that such a person died without issue, and such evidence shall be sufficient to entitle the person next in remainder. Hearsay is evidence in case of settlement of paupers; and on this head it is in general to be observed, that it is no objection to the admission of hearsay evidence, that the party, whose declarations are brought as hearsay evidence, would himself be an inadmissible witness, provided such declarations at the time were indifferent, and used without reference to the question then before the court.

As to how far the characters of witnesses may be questioned on trials, it is settled, that if you will impeach the credit of a witness, you can only examine into his general character, and not to particular facts; for every man is supposed to be capable of supporting the one; but it is not likely he should be prepared to answer the other without notice, and unless his general character and behavior be in issue, he has no notice. But other witnesses may be called to impeach his credit respecting any matter relative to the issue; for whatever is material to the issue, each party must come prepared to prove, or to deny. But a party shall never be permitted to bring general evidence to

discredit his own witnesses; for that would be to enable him to destroy the witness, if he spoke against him, and to make him a good witness, if he spoke for him. But if a witness proves facts in a course, which make against the party who called him, the party may call other witnesses that prove that those facts were otherwise; for such facts are evidence in the cause, and the other witnesses are not called directly to discredit the first witness; but the impeachment of his credit is incidental and consequential only.—(a.)

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## EXCHANGE.

A Bill of Exchange, is an open letter of request from one man to another, desiring him to pay a sum named therein, to a third person, on his account. The person who writes this letter is called the drawer, and he, to whom it is written, the drawee, and the third person, or negotiator, to whom it is payable, whether specially named, or the bearer, generally, is called the payee. These bills are either foreign, or inland: foreign, where drawn by a merchant residing abroad, upon his correspondent in England, or vice versa; and inland, where both the drawer and drawee reside within the kingdom. The payee of a bill of exchange has clearly a property vested in him, not indeed in possession, but in action, by the implied contract of the drawer, that, provided the drawee does not pay the bill, he, the drawer, will; for which reason, it is usual in bills of exchange, to express that the value thereof hath been received by the drawer, in order to shew the consideration, upon which the implied contract of re-payment arises. And this property so vested, may be transferred and assigned to any other man, contrary to the general rule, that no chose in action is assignable. In order then to charge the drawer with the payment of the debt to other persons, than those, with whom he originally contracted, the payee, or person, to whom, or to whose order, such bill of exchange is payable, may, by indorsement, or writing his name in dorso (on the back of it) assign over his whole property to the bearer, or else to another person, by name, either of whom is then called the indorsee; and he may assign the same to another, and so on in infinitum, (without end.) But the payee, or indorsee, whether it be a particular, or general indorsement, is to go to the drawee, and offer his bill of acceptance. If the drawee accepts the bill, either verbally, or in

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(a)—*Espinasse's New Pius, 703, &c.*

writing, he then makes himself liable to pay it; this being ~~now~~ a contract on his side, grounded on an acknowledgment that the drawer has effects in his hands, or at least credit sufficient to warrant the payment. Every protest for non-acceptance, or non-payment, must be made in writing, under a copy of the bill of exchange, by some notary public; or, if no such notary be resident in the place, then by any other substantial inhabitant, in the presence of two credible witnesses. If the bill be an indorsed bill, and the indorsee cannot get the drawee to discharge it, he may call upon either the drawer, or indorser; or, if the bill has been negotiated through many hands, upon any of the indorsers, for each indorser is a warrantor for the payment of the bill. And if such indorser, so called on, has the names of one, or more, indorsers, prior to his own, to each of whom he is properly an indorser, he is also at liberty to call upon any of them to make him satisfaction; and so upwards. But the first indorser has no body to resort to but the drawer only.—(a.)

Bills of exchange are drawn, either payable at sight, or in so many days, weeks, or months, or at one or two, usances, &c. There is an inland bill of exchange, and foreign bill: an inland bill has been said to be only in the nature of a letter; but an outland bill is more regarded in the eye of the law; because it is for the advantage of commerce with other countries, which makes it of a more public concern: And a foreign bill being refused to be accepted, by the law of merchants, action lies against the drawer; and if the person, to whom directed, subscribes the bill, it is assumpsit to pay it. Every indorser of a bill is liable, as the first drawer, every indorsement being in the nature of a new bill. But, by the custom of merchants, the indorsee is to receive the money of the first drawer, if he can; and if he cannot, then the indorser is to answer. The indorser of a bill is not liable to pay it, till endeavor has been made to find the drawer. But an indorser is not discharged, without actual payment of the bill, unless there be some neglect, or default in the indorsee; as where he doth not endeavor to receive the money in convenient time. An indorser charges himself in the same manner as the original drawer, and a plaintiff need not prove the drawer's hand, as the indorser is a new drawer; but he must prove that he demanded the money of the drawer, or drawee, or that he sought and could not find them, in convenient time. In case a bill be bought at discount, it is an absolute purchase, and if the same be again indorsed, the indorser warrants the whole bill. A blank indorsement doth not transfer the property of a bill of exchange, though the person, to whom indorsed, may fill up the indorsement, so as to change the indorser; for, where one indorses his name on a bill, the indor-

He may make what use of it he pleases, by way of assignment, acquittance, &c. If a bank bill payable to A B, or bearer, be lost, and it is found by a stranger, payment to him would indemnify the bank; yet, A B may have trover against the finder, though not against his assignee, for valuable consideration, which creates a property. If a man gives a note in the words, viz: I promise to account with T. S. or his order, for fifty dollars, value received, it shall be construed as a promise to pay the money, and be a good bill indorsable to another, who may bring an action for the same. The acceptance of a bill, though after the money is payable, is binding on the party accepting, and an action is maintainable thereon, the effect of the bill being the payment of the money, and not the day of payment. A bill once accepted may not be revoked by the party that accepted it, though immediately after, and before it becomes due, he hath advice that the drawer is broke. Any person may accept a bill for the honor of the drawer, and if he pays the money in default of the party, he is to make a protest, with declaration that he paid the same, for the drawer's honor. If one merchant having a right understanding with another, says, leave your bill with me, and I will receipt it, by the custom of merchants, it obliges him as effectually as if he had signed it. If a bill be accepted, and the person who accepted the same, happens to die before the time of payment, there must be a demand made of his executors, or administrators; and, on non-payment, a protest is to be made although the money becomes due before there can be administration, &c. A bill may be accepted for part, the party on whom drawn having no more effects in his hands; and there may be a protest for the residue. If a man be not to be found, or being found, is not to be met with afterwards, it is cause sufficient for a protest. Where a bill is negotiated, if the same be to be paid at a certain day, and accepted, the protest must be on the day of payment; but, if payment at sight, it must be protested the third day of grace: And when such bill of exchange is not paid, the interest thereon commences only from the time of demand. A gentleman travelling for education, draws a bill of exchange, this is negotiating it, and makes him a merchant, &c. A bill of exchange, directed to one, to pay so much, for value received, shall be a good discharge of the debt, if the bill be not returned back to the drawer in time, although it be not paid; for keeping the bill long is evidence that he hath agreed to take the merchant as debtor. If a man pays a bill of exchange, before due, and the person, to whom paid, fails before the time of payment, he shall be obliged to pay it again to the deliverer; because the drawer might have countermanded the same, or ordered the bill to be made payable to another person. A person gives a bill of exchange, &c. upon a third person, to another in payment, and he takes it absolutely, if he knew the

third person to be breaking, or in a failing condition, and the receiver of the bill uses all diligence to get payment, but cannot, this is a fraud, and no payment; though if a man takes a note, or bill, and after it is payable, makes no demand, so that he might be paid, if he were diligent enough, then, if the party on whom the bill is drawn, fails, it is at the peril of him that took it. A drawer of a bill of exchange is always answerable by the value received, though there be no tender of the bill for payment, or it be not protested, unless the person, on whom drawn, break, and then it is otherwise, for in that case, the party who paid the money for the bill, loseth it; though it is said the words value received are not absolutely necessary to a bill of exchange; for when they are mentioned therein, the drawer must answer it at common law; and if not, then by the custom of merchants. If a possessor of a bill, by any accident, loses it, he must cause intimation to be made by a notary public, before witnesses, that the bill is lost, or mislaid, requiring that payment of the same be not made to any person without his privity. A paper bill, or note, is no payment, where there was an original and precedent debt due, but shall be intended to be taken upon condition that the money be paid in convenient time; but taking a note, in writing, for goods sold, may amount to payment of the money, because 'tis part of the original contract.—(a.)

A bill of exchange drawn by a person resident in South Carolina, or a person resident in any other of the United States, is to be considered a foreign bill.—(b.)

It is a well established rule of law, that the indorsees of a note of hand, cannot resort to the indorser, until he has applied to the maker of the note, or the acceptor of the bill, and payment has been refused by him, nor until he has given notice to the indorser, of such 'demand' and refusal: And it is immaterial, whether the indorsement were made before, or after, the note became due.—(c.)

Any delay on the part of the holder of a note, in his attempt to recover against the principal, is an injury done to the indorser, as a collateral undertaker, and lessens his chance of indemnity; for these reasons, the law enjoining great punctuality and diligence on the part of every holder of a bill, or note. And hence, it results, that every indulgence given by such holder, by giving further day, or taking a new security, releases the indorser.—(d.)

A want of consideration cannot be pleaded against the claim of an indorsee, who is a bona fide holder of a negotiable paper.

(a)—Jacob's Law Dictionary. (b)—Dugdale vs. Couse: 1 Mill, p. 100. (c)—Eckford vs. Des Goudres & Co. 1 Mill, p. 69. (d)—Moodie vs. Morris: 1 Mill, p. 370.

indorsed before due, for a valuable consideration, and without any notice had of a want of consideration.—(a.)

The holder of a negotiable note, indorsed in the course of trade, is bound to demand payment of the drawer, when due, and in case of non-payment, to give notice thereto to the indorser, at as early a period as possible.—(b.)

Such notes only, as are for the payment of money, absolutely, and not those for the delivery of property, are, in a legal sense, considered as promissory notes.—(c.)

When the maker of a promissory note dies, the holder is not thereby excused from making due diligence to receive payment of his representatives; and notice of non-payment should be given to the indorser within a reasonable time.—(d.)

Notice in the gazettes, that a note has been illegally obtained, &c. is not evidence.—(e.)

### EXECUTOR AND ADMINISTRATOR.

An executor is he, to whom another man commits, by will, the execution of his last will and testament. All persons are capable of being executors, who are capable of making wills; and many others, besides, as feme coverts, and infants; nay, even infants unborn, may be made executors; but no infant can act as such, till the age of seventeen years; 'till which time, administration must be granted to some other, *durante minoris aetate*, (during his minority,) in like manner, as it may be granted, *durante absentia*, (during the absence of the executor abroad;) or when a suit is commenced touching the validity of a will. This appointment of an executor is essential to the making of a will, and it may be performed either by express words, or such as strongly imply the same. The interest vested in the executor, by the will of the deceased, may be continued and kept alive by the will of the same executor; so that the executor of A's executor is, to all intents and purposes, the executor and representative of A himself; but the executor of A's administrator, or the administrator of A's executor is not the representative of A himself; for the power of an executor is founded upon the special confidence, and actual appointment of the deceased; and such executor is therefore allowed to transmit that power to another in whom he has equal confidence; but the administra-

(a)—*Poag, assec. vs. Wade & McDonald*: 2 Mill, 183. (b)—*Harrison vs. Lowell*, 2 Mill, 193. (c)—*Peay, assec. vs. Pickett, and al.* 1 Nott & McCord, p. 235; and *Twitty, adm'r. of Todd*, p. 261. (d)—*Exiz. of Price vs. Young*; 1 Nott & McCord, 138. (e)—*Ring vs. Huntington*: 1 Mill, p. 162. Where a bank bill is cut into two parts, its negotiability is thereby destroyed; and the owner of the bill, being in possession of one part, is entitled to payment from the bank: *Patton vs. The Bank*: 2 Nott & McCord, p. 464.

tor of A, is merely the officer of the ordinary, in whom the deceased has reposed no trust at all; and therefore, on the death of that officer, it results back to the ordinary, to appoint another. Wherefore, whenever the course of representation from executor to executor, is interrupted by any one administration, it is necessary for the ordinary to commit administration afresh, of the goods of the deceased, not administered by the former executor, or administrator: And this administrator ~~de bonis non~~ is the only legal representative of the deceased, in matters of personal property.

The office and duty of executors and administrators are very much the same; excepting, first, that an executor is bound to perform a will, which an administrator is not, unless a will be annexed to his administration; and then he differs still less from an executor; and, secondly, that an executor may do many acts before he proves the will; but an administrator may do nothing before letters of administration are issued; for the former derives his power from the will, and not from the probate; the latter owes his entirely to the appointment of the ordinary. If a stranger takes upon himself to act as an executor, without any just authority, as by intermeddling with the goods of the deceased, he is called, in law, an executor of his own wrong, (*de son tort*) and is liable to all the trouble of an executorship, without any of the profits, or advantages. But, merely doing acts of necessity, or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling, as will charge a man as executor of his own wrong. Such an one cannot bring an action in right of the deceased; but actions may be brought against him. He is chargeable with the debts of the deceased, so far as assets come to his hands; and, as against creditors in general, shall be allowed all payments made to any other creditor in the same, or a superior degree, himself only excepted; and though, as against the rightful executor, or administrator, he cannot plead such payment, yet it shall be allowed him in mitigation of damages, unless, perhaps, upon a deficiency of assets, whereby the rightful executor may be prevented from satisfying his own debt. The executor, or, administrator, must bury the deceased in a manner suitable to the estate, which he leaves behind him; and if he be extravagant, it is a species of devastation, or waste, of the substance of the deceased, and shall only be prejudicial to himself, and not to the creditors, or legatees, of the deceased. The executor, or administrator, during infancy, or absence, or with the will annexed, must prove the will of the deceased, which is done, either in form, that is, only upon his own oath before the ordinary, or by witnesses, in more solemn form of law, in case the validity of the will be disputed. The executor, or administrator, is to collect all the goods and chattels of the deceased; and,

so that end; he has very large powers and interests conferred on him by law, being the representative of the deceased, and having the same property in his goods, as the principal had, when living, and the same remedies to recover them. And if there be two, or more, executors, a sale, or release, by one of them, shall be good against all the rest; but, in case of administrators, it is otherwise. Whatever is so received, that is of a saleable nature, and may be converted into ready money, is called assets in the hands of the executor, or administrator, and lie will be chargeable to the amount of such goods and chattels, to a creditor, or legatee.—(a.)

An administrator's bond to the ordinary, cannot be considered as forfeited, so as to change either principal, or security, before a citation to account has been served, and a decree made by the ordinary. An executor, or administrator, cannot be compelled to account in the court of common pleas.—(b.)

### EXECUTORY DEVISE.

An executory devise of lands, is such a disposition of them by will, that thereby no estate vests at the death of the devisor, but only on some future contingency; and, till that contingency happens, the testator does not dispose of the fee simple, but leaves it to descend to his heir at law: as if one devises land to a femme sole, and her heirs, upon her day of marriage; or devises his whole estate in fee, but limits a remainder thereon, to commence on a future contingency: as if a man devises land to A, and his heirs; but, if he dies before the age of twenty-one, then to B, and his heirs; and, in both these species of executory devise, the contingencies ought to be such as may happen in a reasonable time; as within one, or more, life, or lives, in being; or within a moderate term of years; for courts of justice will not indulge even wills, so as to create a perpetuity, which the law abhors. The utmost length that has been allowed for the contingency of an executory devise of either kind, to happen in, is that of a life, or lives, in being, and one and twenty years afterwards. As when lands are devised to such unborn son of a femme covert, as shall attain the age of twenty-one years, and his heirs. By executory devise, a term of years may be given to one man for life, and afterwards limited over in remainder to as many persons, successively, as the devisor thinks proper; but

(a)—2 Bl. Com. p. 503, &c. (b)—Ordinary vs. Williams, & al. 1 Nott & McCord, p. 587: see also, Simkins; Ordinary, vs. Powers: 2 do., p. 213,

they must all be in esse during the life of the first devisee; for then, all the candles are lighted, and are consuming together, and the ultimate remainder is, in reality, only to that remainder man, who happens to survive the rest; and in this case, there is no danger of a perpetuity.—(a.)

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### EXTORTION.

**EXTORTION** is an abuse of public justice, which consists in any officer's unlawfully taking, by color of his office, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment.—(b.)

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### FALSE IMPRISONMENT.

To constitute this injury, there are two points requisite: 1st, the detention of the prisoner; and, 2d, the unlawfulness of such detention. Every confinement of the person, is an imprisonment; whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. Unlawful, or false, imprisonment, consists in such confinement, or detention, without sufficient authority; which authority may arise, either from some process of a court of justice, or some warrant from a legal officer, having power to commit, under his hand and seal, and expressing the cause of such commitment, or for some other special cause, warranted for the necessity of the thing, either by common law, or act of the legislature. False imprisonment may also arise, by executing a lawful warrant, or process, at an unlawful time. Besides a satisfaction in damages to the party injured, the offender is liable to pay a fine to the state, for the violation of the public peace,—(c.)

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### GAOLERS.

**GAOLERS** are the servants of the sheriffs, who are responsible for their conduct. Their business is to keep safely, all such persons as are committed to them by lawful authority.—(d.)

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(a)—2 Bl. Com. p. 172, &c. (b)—4 Ibid. p. 141. (c)—3 Ibid. pp. 127, 138.  
(d)—1 Ibid. p. 346.

In the dubious interval between the commitment and trial of a prisoner, he ought to be used with the utmost humanity; and neither be loaded with useless floggings, nor subjected to other punishments than such as are absolutely requisite for the purpose of confinement only.—(o.)

If a gaoler barbarously misuses a prisoner, he may be fined, and discharged. When a gaol is broken by thieves, the gaoler is answerable; but not if it be broken by enemies.—(p.)

### GIFT.

A true and proper gift, or grant, is always accompanied with delivery of possession, and takes effect immediately: as if A gives to B, one hundred pounds, or a flock of sheep, and puts him in possession of them directly, it is then a gift executed, in the donee; and it is not in the donor's power to retract it, though he do it without any consideration, or recompense, unless it be prejudicial to creditors, or the donor was under any legal incapacity, as infancy, coverture, duress, or the like; or he was drawn in, circumvented, or imposed on by false pretences, bribery, or surprise. But, if the gift does not take effect immediately, by delivery of possession, it is then, not properly a gift, but a contract; and this a man cannot be compelled to perform, but upon good and sufficient consideration.—(a.)

Where a man says he has given property to his daughter, he must be understood to have done it, with all the solemnities necessary to constitute a gift; and a subsequent possession with his consent, is sufficient evidence of a delivery.—(b.)

If possession pass from the donor to the donee, in his presence, and with his consent, whether it be delivered by his hand, or only by his direction, is perfectly immaterial.—(c.)

### GUARDIAN AND WARD.

The power and reciprocal duty of a guardian and ward, are the same, pro tempore, as that of a father and child. When the ward comes of age, the guardian is bound to give him an

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(o)—4 Bl. Com. p. 300. (p)—Jacob's Law Dictionary. (a)—2 Bl. Com. p. 441. (b)—See Brashears vs. Blasingame: 1 Nott & McCord, p. 223. (c)—Ibid. 240: McDowell vs. Murdock; and p. 603, Reid vs. Colcock.

## HIRING AND BORROWING.

account of all that he has transacted on his behalf; and must answer for all losses by his wilful default and negligence. (d.) If a suit be commenced against an infant, the court will appoint a guardian ad litem, to manage his defence; a power incident to the jurisdiction of every court of justice.—(e.)

A natural guardian cannot make a lease of the land of his ward.—(f.)

## HIRING AND BORROWING

ARE contracts, by which a qualified property may be transferred to the hirer or borrower, in which there is only this difference, that hiring is always for a price, and borrowing is nearly gratuitous. But the law, in both cases, is the same. They are both contracts, whereby the possession, and a transient property is transferred by a particular time, or use, on condition, to restore the goods so hired, or borrowed, as soon as the time is expired, or use performed, together with the price, or stipend, (in case of hiring) either expressly agreed on by the parties, or left to be implied by law, according to the value of the service. By this mutual contract, the hirer, or borrower, gains a temporary property in the thing hired, accompanied with an implied condition to use it with moderation, and not abuse it; and the owner, or lender, retains a reversionary interest in the same, and acquires a new property in the price, or reward. Thus, if a man hires, or borrows, a horse for a month, he has the possession, and a qualified property therein, for that period, on the expiration of which, his qualified property determines, and the owner becomes, in case of hiring, entitled also, to the price for which the horse was hired.—(g.)

If a thing be used to any other use, or purpose, than that for which it was borrowed, the party may have his action for it, though the thing be never the worse; and if what is borrowed be lost, although it be not by any negligence of mine, as if I be robbed of it, or where the thing is impaired, or destroyed, by my neglect, admitting I put it to no more service, than that, for which borrowed, I must make it good. But if goods borrowed perish by the act of God, in the right use of them, I shall not be charged.—(h.)

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(d)—1 Bl. Com. p. 462. (e)—3 Ibid. p. 427. (f)—1 Nott & McCord, p. 372—Anderson ad. Darby. (g)—2 Bl. Com. p. 453. (h)—Jacob's Law Dictionary.

## HOMICIDE,

Or the killing of a human creature, is of three kinds: justifiable, excusable, and felonious. The first has no share of guilt at all: the second very little; but the third is the highest crime against the law of nature, that man is capable of committing. Justifiable homicide, is of divers kinds: 1st, such as is owing to some unavoidable necessity, without any will, intention, or devise, and without any inadvertence, or negligence, in the party killing, and, therefore, without any shadow of blame: as, for instance, by virtue of such an office, as obliges one in the execution of public justice, to put a malefactor to death, who hath forfeited his life by the laws, and verdict of his country. But the law must require it, otherwise it is not justifiable; therefore, wantonly to kill the greatest of malefactors, a felon, or a traitor, deliberately, uncompolled, and extrajudicially, is murder. And if judgment of death be given by a judge not authorized by lawful commission, and execution is done accordingly, the judge is guilty of murder. Also, such judgment, when legal, must be executed by the proper officer, or his appointed deputy; for no one else is required by law to do it; which requisition it is that justifies the homicide. If another person doth it, of his own head, it is held to be murder, even though it be the judge himself. It must, farther, be executed in pursuance of the sentence of the court; if an officer beheads one, who is adjudged to be hanged, or vice versa, it is murder; for he is merely ministerial, and therefore only justified when he acts under the authority, and compulsion of the law. In some cases, homicide is justifiable, rather by the permission, than the absolute command of the law; either for the advancement of public justice, which, without such indemnification, would never be carried on with sufficient vigor, or in such instances, where it is permitted for the prevention of some atrocious crime, which cannot otherwise be avoided. Homicides committed for the advancement of public justice are: 1st, where an officer, in the execution of his office, either in a civil or criminal case, kills a person, that assaults and resists him: 2d, If an officer, or any private person, attempts to take a man charged with felony and is resisted, and in the endeavor to take him kills him: 3d, In case of a riot, or rebellious assembly, the officers endeavoring to disperse the mob, are justifiable in killing them: 4th, Where the prisoners in a gaol, or going to gaol, assault the gaoler, or officer, and he, in his defence, kills any of them, it is justifiable, for the sake of preventing an escape. But, in all these cases, there must be an apparent necessity on the officer's side, viz: that the party could not be arrested, or apprehended: the riot

could not be suppressed; the prisoners could not be kept in bold unless such homicide was committed; otherwise, without such absolute necessity, it is not justifiable. Such homicide as is committed for the prevention of any atrocious crime, is justifiable: as, if any person attempts a robbery, or murder, of another, or attempts to break open a house in the night time; which extends also to an attempt to burn it, and shall be killed in such attempt, the slayer shall be acquitted and discharged. But this reaches not to any crime unaccompanied with force, as picking of pockets, or to the breaking open of any house, in the day-time, unless it carries with it an attempt of robbery also. -A woman is justifiable in killing one, who attempts to ravish her; and so to, the husband, or father, may justify killing a man, who attempts a rape upon his wife, or daughter; but not if he takes them in adultery by consent; for the one is forcible and felonious, but not the other; and there is no doubt but the forcibly attempting a crime of a still more detestable nature may be equally resisted by the death of the unnatural aggressor; for the one uniform principle, that runs through all laws, seems to be this, that where a crime, in itself capital, is endeavored to be committed by force, it is lawful to repel that force, by the death of the party attempting. Excusable homicide is of two sorts; either per infortunium, by misfortune, or se defensio, upon a principal of self-preservation. Homicide by misadventure, is where a man doing a lawful act, without any intention to hurt, unfortunately kills another: as where a man is at work with a hatchet, and the head thereof flies off, and kills a stander-by, or where a person is shooting at a mark, and undesignedly kills a man; for the act is lawful and the effect is merely accidental. So, where a parent is moderately correcting his child, a master his apprentice, or scholar, for the act of correction was lawful; but, if he exceeds the bounds of moderation, either in the manner, instrument, or the quantity of punishment, and death ensues, it is manslaughter, at least; and, in some cases, according to the circumstances, murder; for the act of immoderate correction is unlawful. So, likewise, to whip another's horse, whereby he runs over a child, and kills him, is held to be accidental in the rider, for he has done nothing unlawful; but manslaughter in the person, who whipped him; for the act was a trespass, and, at least, a piece of idleness of inevitably dangerous consequences: And, in general, if death ensues, in consequence of an idle, dangerous, and unlawful sport, as shooting, or casting stones in a town, in these, and similar cases, the slayer is guilty of manslaughter, and not misadventure only; for these are unlawful acts. Homicide, in self-defence, upon a sudden affray, is also excusable, rather than justifiable. This species of self-defence must be distinguished from that above mentioned, as calculated to hinder the perpetration of a capital crime; which is not only

a matter of excuse, but of justification. But the self-defence we are now speaking of, is that, whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl, or quarrel, by killing him who assaults him. And this is what the law expresses by the word chance medley. But, to excuse homicide by the plea of self-defence, it must appear that the slayer had no other possible, or at least probable, means of escaping from his assailant. The true criterion between this species of homicide and manslaughter, in the proper legal sense of the word, seems to be this: when both parties are actually combatting at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not begun to fight, or having begun, endeavors to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him, to avoid his own destruction, this is homicide, excusable by self-defence. For which reason, the law requires; that the person, who kills another in his defence, should have retreated as far as he conveniently, or safely, can, to avoid the violence of the assault, before he turns upon his assailant; and that, not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood. The party assaulted must flee as far as he conveniently can; either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him; for it may be so fierce, as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then, in his defence, he may kill his assailant instantly. And as the minister, so is also the time to be considered; for if the person assaulted does not fall upon the aggressor, till the affray is over, or when he is running away, this is revenge, and not defence. Neither under the color of self-defence, will the law permit a man to screen himself from the guilt of deliberate murder; for if two persons, A and B, agree to fight a duel, and A gives the first blow, and B retreats as far as he safely can, and then kills A, this is murder, because of the previous malice, and concerted design. But if A, upon a sudden quarrel, assaults B first, and upon B's returning the assault, A really, and bona fide, flies; and, being driven to the wall, turns again upon B, and kills him, this may be in self-defence, according to some of our writers; but others have thought this opinion too favorable, inasmuch as the necessity, to which he is at last reduced, originally arose from his own fault. Under this excuse of self-defence, the principal civil and natural relations are comprehended; therefore, master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other, respectively, are excused: the act of the relation assisting, being construed the same as the act of the party himself. There is one species of homicide, in self-defence, where the party slain

**HOMICIDE:**

is equally innocent, as he, who occasions his death; and yet, this homicide is also excusable, from the great universal principle of self-preservation, which prompts every man to save his own life preferably to that of another, where one of them must inevitably perish: as, among others, in the case mentioned by lord Bacon, where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrust the other from it, whereby he is drowned.

Felonious homicide is the killing of a human creature of any age or sex, without justification, or excuse; and this may be done, either by killing one's self, or another. A *felo de se* is he, that deliberately puts an end to his own existence; or commits any unlawful malicious act, the consequence of which is his own death. The party must be of years of discretion, and in his own senses, else it is no crime. And this admits of accessories before the fact, as well as other felonies; for if one persuades another to kill himself, and he does so, the adviser is guilty of murder. Manslaughter is the unlawful killing of another, without malice, either express, or implied; which may be, either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. Hence it follows, that in manslaughter, there can be no accessories before the fact. As to the first, or voluntary, breach, if, upon a sudden quarrel, two persons fight, and one of them kills the other, this is manslaughter; and so it is, if they, upon such an occasion, go out, and fight in a field; for this is one continued act of passion; and the law pays such regard to human frailty, as not to put a hasty, and a deliberate act, upon the same footing, with regard to guilt. So also, if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kills the aggressor, though this is not excusable *se defendendo*, since there is no absolute necessity for doing it, to preserve himself, yet it is not murder; for there is no previous malice; but it is manslaughter. But in this, and every other case of homicide, upon provocation, if there be a sufficient cooling time, for passion to subside, and reason to interpose; and the person so provoked afterwards kills the other, this is deliberate revenge, and not heat of blood, and accordingly amounts to murder. So if a man takes another in the act of adultery with his wife, and kills him directly upon the spot, he is guilty of manslaughter. It is however the lowest degree of it, and therefore the court will direct the burning in the hand to be gently inflicted; because there could not be a greater provocation. Involuntary manslaughter always happens in consequence of an unlawful act: as if two persons play at any unlawful game and one of them kills the other, this is manslaughter, because the original act was unlawful; but it is not murder, for the one had no intent to do the other any personal mischief. So where a person does an act, lawful

in itself, but in an unlawful manner, and without due caution and circumspection, as where a workman flings down a stone, or piece of timber, into the street, and kills a man, this may be misadventure, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village, where few passengers are, and he calls out to all people to have a care, it is misadventure only; but if it were in any populous town, where people are continually passing, it is manslaughter, though he gives loud warning; and murder, if he know of their passing, and gives no warning at all; for then it is malice against all mankind. And, in general, when an involuntary killing happens in consequence of an unlawful act, it will be either murder, or manslaughter, according to the nature of the act which occasioned it. If it be in prosecution of a felonious intent, or in its consequences naturally tend to bloodshed, it will be murder; but if no more be intended than a mere civil trespass, it will only amount to manslaughter. The punishment of this species of homicide is death; but within the benefit of clergy, and the offender shall be discharged upon being burnt in the hand.

Murder is thus defined, or rather described, by Sir Edward Coke, "where a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express, or implied:" 1st, it must be committed by a person of sound memory and discretion; and therefore lunatics or infants are incapable of committing it; except in such cases where they shew a consciousness of doing wrong, and of course a discretion or discernment between good and evil: 2d, the killing must also be unlawful, and this is where it is done without warrant or excuse. The killing may be by poisoning, sticking, starving, drowning, and a thousand other forms of death, by which human nature may be overcome. If a man does such an act, of which the probable consequence will be, and eventually is, death, such killing may be murder, although no stroke be struck by himself, and no killing may be primarily intended, as was the case with the unnatural son who exposed his sick father to the air against his will, by reason whereof he died; of the harlot who laid her child under leaves in an orchard, where a kite struck it, and killed it; and of the parish officer, who shifted a child from parish to parish, till it died for want of care and sustenance. So too, if a man hath a beast that is used to do mischief, and he knowing it, suffers it to go abroad, and it kills a man, even this is manslaughter in the owner; but if he had purposely turned it loose, though barely to frighten people, and make what is called sport, it is as much murder as if he had incited a bear or dog to worry them. In order also to make the killing murder, it is requisite that the party die within a

year and a day after the stroke received, or cause of death administered; in the computation of which, the whole day, upon which the hurt was done, shall be reckoned the first: 3d, the person killed must be a reasonable creature in being, and under the king's peace at the time of the killing: therefore, to kill an alien, a Jew, or an outlaw, who are all under the king's peace and protection, is as much murder as to kill the most regular born Englishman; except he be an alien enemy in time of war. To kill a child in its mother's womb is not murder, but a great misprision: but if the child be born alive, and death ensues by reason of the potion, or bruises, it received in the womb, it seems by the better opinion to be murder in such as administered, or gave them. Lastly, the killing must be with malice aforethought, to make it the crime of murder; and this malice prepense is not, so properly, spite or malevolence to the deceased in particular, as any evil design in general; the dictate of a wicked, depraved, and malignant heart; and it may be either express or implied in law. Express malice is, where one with a sedate, deliberate mind, and formed design, doth kill another; which formed design is evidence by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Also, if even upon a sudden provocation, one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder by express malice; that is by an express evil design, the genuine sense of malitia; as where a park-keeper tied a boy that was stealing wood to a horse's tail, and dragged him along the park; where a master corrected his servant with an iron bar, and a school-master stamped on his scholar's belly, so that each of the sufferers died, they were justly held to be murders; because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of slaughter. Nor shall he be guilty of a less crime who kills another in consequence of such a wilful act, as shews him to be an enemy to all mankind in general; as going deliberately, and with intent to do mischief, upon a horse used to strike, or coolly discharging a gun, among a multitude of people. So if a man resolves to kill the next man he meets, and does kill him, it is murder, although he knows him not, for this is universal malice. And if two or more come together to do an unlawful act against the peace, of which the probable consequence might be bloodshed, as to beat a man, commit a riot, or to rob a park, and one of them kills a man, it is murder in them all, because of the unlawful act, the malice prepense, or evil intended before-hand. Also, in many cases, where no malice is expressed, the law will imply it; as where a man wilfully poisons another, in such a deliberate act, the law presumes malice, though no par-

icular enmity can be proved. And if a man kills another suddenly, without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act upon a slight, or no apparent cause. No affront by words or gestures only, is a sufficient provocation so as to excuse or extenuate such acts of violence, as manifestly endanger the life of another. But if the person so provoked had unfortunately killed the other, by beating him in such a manner, as shewed only an intent to chastise, and not to kill him, the law so far considers the provocation of contumelious behavior, as to adjudge it only manslaughter, and not murder. In like manner, if one kills an officer of justice, either civil or criminal, in the execution of his duty, or any of his assistants, endeavoring to conserve the peace, any private person endeavoring to suppress an affray, or apprehend a felon, knowing his authority, or the intention with which he interposes, the law will imply malice, and the killer shall be guilty of murder: and if one intends to do another felony, and undesignedly kills a man, this is also murder. Thus if one shoots at A, and misses him, but kills B, this is murder, because of the previous felonious intent, which the law transfers from the one to the other.—

The same is the case where one lays poison for A, and B, against whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. So also, if one gives a woman with child medicine to procure abortion, and it operates so violently, that it kills the woman, this is murder in the person who gave it. And we take it for a general rule, that all homicide is malicious, and of course amounts to murder, unless where justified by the command or permission of the law, excused on account of accident, or self-preservation, or alleviated into manslaughter, by being either the involuntary consequence of some act not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse, or alleviation, it is incumbent upon the prisoner to make out to the satisfaction of the court and jury; the latter of whom are to decide, whether the circumstances alleged are proved to have actually existed; the former, how far they mitigate, or take away the guilt; (though the jury have an unquestionable right of determining upon all the circumstances, and finding a general verdict of guilty, or not guilty;) (a) for all homicide is presumed to be malicious until the contrary appeareth upon evidence.—(b.)

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(a)—4 Bl. Com. p. 361. (b)—Ibid. p. 176, &c.

## INDICTABLE, WHAT.

ALL kinds of crimes of a public nature, all disturbances of the peace, all oppressions, and other misdemeanors whatsoever, of a notoriously evil example, may be indicted at the suit of the state.—(c.)

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## IGNORANCE.

EVERY man is bound, at his peril, to take knowledge what the law of the realm is, as well the law made by statute, as the common law; but ignorance of the deed, which may be called ignorance of the truth of the deed, may excuse in many cases. As if a man retain another's servant, not knowing that he is retained with him, the ignorance excuseth him of the offence.—The same law is of him that retaineth another's ward; not knowing that he is his ward. Also, if a man be bound in an obligation that he shall repair the houses of him that he is bound to by such a certain time, as oft as need shall require; and after the houses have need to be repaired, but he that is bound, knoweth it not, that ignorance shall not excuse, for he hath bound himself to do it, and so he must take knowledge at his peril. But if the condition had been that he should repair such houses, as he to whom he was bound should assign, and after he assigneth certain houses to be repaired, but he that is bound hath no knowledge of that assignment, that ignorance shall excuse him in the law; for he hath not bound himself to any reparation in certain, but to such as the party will assign; and if he assign none, he is bound to none; and therefore, since he that should make the assignment is privy to the deed, he is bound to give notice of his own assignment. But if the assignment had been appointed to a stranger, then the obligor must have taken knowledge at his peril. Also, if a servant cometh with his master's horse to a town, that, by custom, may attach goods for debt, and upon a plaint against the servant, an officer of the town, by information of the party, attaches his master's horse, thinking that it were the servant's horse, that ignorance excuseth him not; for, where a man will do an act, as to enter into land, seize goods, take a distress, or such other, he must, by the law, at his peril, see, that that, that he doth, be lawfully done,

as in the case before rehearsed. And, in likewise, if a sheriff, by a replevin, deliver other beasts than were distrained, though the party that distrained shew him that they were the same beasts, yet an action of trespass lieth against him, and ignorance shall not excuse him; for he shall be compelled by the law, as all officers commonly be, to execute the writ at his peril, according to the tenor of it; and to see that the act that he doth be lawfully done.—(d.)

## INFANCY.

FULL age in male or female, is twenty-one years, which is completed on the day preceding the anniversary of a person's birth; who, till that time, is an infant, and so stiled in law.—But the ages of male and female are different for different purposes. A male at twelve years old, may take the oath of allegiance; at fourteen, is at years of discretion, and therefore may consent or disagree to marriage, may choose his guardian, and if his discretion be actually proved, may make a testament of his personal estate: at seventeen may be an executor: and at twenty-one, is at his own disposal, and may alien his lands, goods, and chattels. A female also, at seven years of age, may be betrothed or given in marriage: at nine, is entitled to dower: at twelve, is at years of maturity, and therefore may consent or disagree to marriage; and if proved to have sufficient discretion, may bequeath her personal estate: at fourteen, is at years of legal discretion, and may choose her guardian: at seventeen, may be executrix: and at twenty-one, may dispose of herself, and lands. An infant cannot be sued but under the protection, and joining the name of his guardian: for he is to defend him against all attacks, as well by law as otherwise: but he may sue, either by his guardian, or prochein amy, his next friend, who is not his guardian. This prochein amy may be any person that will undertake the infant's cause; and it frequently happens that an infant, by his prochein amy, institutes a suit in equity against a fraudulent guardian. It is generally true that an infant cannot do any legal act, or make any manner of contract that will bind him. But to this rule there are some exceptions; part of which have been mentioned, in reckoning up the different capacities they assume at different ages; and he may bind himself to pay for his necessary meat, drink, apparel, physic, and such other necessaries; as well as for his good teach:

(d)—Doctor and Student, p. 250, &c.

ing and instruction, whereby he may profit himself afterwards. He may also purchase lands; but his purchase is incomplete; for when he comes to age, he may either agree or disagree to it as he thinks prudent or proper, without alleging any reason; and so may his heirs after him, if he dies without having completed his agreement.—(a.)

Where an infant makes a deed, and delivers it within age, though he afterwards delivers it again at full age, this second delivery and deed are void; for the deed must take effect from the first delivery. If an infant makes a lease, paying rent, and after his coming of age, he accepts the rent, the voidable lease is made good. An infant may bind himself to pay for necessaries, but not by bond with penalty; though a bill for necessaries, without a penalty, for the very sum due, 'tis said will bind him. Money laid out for necessaries for an infant, hath been allowed, when money lent for that purpose hath not. One lends a sum of money to an infant to pay a debt for things necessary, as the infant may misapply it, he is therefore not liable at law. An infant sells goods to another; he may make the sale void, or have debt, &c. for the money. If an infant sell a horse, he may take it again. Where an infant enters into bond, pretending to be of full age, though he may avoid it by pleading his infancy, yet he may be indicted for a cheat.

Infants committing a trespass against the person, or possession of another, must answer for the damage in a civil action. And infants shall be punished for battery, slander, cheating with false die, perjury, &c. An infant is incapable of being a juror, attorney, steward, &c. But he may be a mayor, sheriff, gaoler, &c.—(e.)

A sale, accompanied by delivery, made by an infant, is good against third persons.—(g.)

If an infant, upon the sale of a horse, knowing him to be unsound, warrants him to be sound, he will be liable, upon the ground of fraud; for which an infant is bound.—(h.)

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### JURORS.

As the jurors appear, when called, they shall be sworn, unless challenged by either party; which may be done propter defectum, (on account of some defect;) as, if a juror be an alien, this is defect of birth; if he be a slave, or bondman, this is defect of liberty; and he cannot be, as the law requires, liber

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(a)—1 Bl. Com. p. 463. (e)—Jacob's Law Dictionary. (g)—Johnson and al. ads. Packer, 1 Nott & McCord, p. 1. (h)—Word ads. Fawce, 1 Nott & McCord, p. 197.

et legalis homo, (a free and lawful man.) Propter affectum, for suspicion of bias, or partiality; and this may be, either a principal challenge, or to the favor. A principal challenge is such, where the cause assigned carries with it, *prima facie*, evident marks of suspicion, either of malice or favor; as, that a juror is of kin to either party; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he has formerly been a juror in the same cause; that he is the party's master, servant, counsellor, steward, or attorney, of the same society, or corporation, with him; which, if true, cannot be overruled; for jurors must be *omni exceptione majoris*, (above all exception.) Challenges to the favor are, where the party hath no principal challenge, but objects some probable circumstances of suspicion, as acquaintance, or the like: the validity of which must be left to the determination of triors; whose office it is, to decide whether the juror be favorable, or unfavorable. Propter delictum; for so quo crime, or misdemeanor, that affects the juror's credit, and renders him infamous; as for a conviction of treason, felony, perjury, conspiracy, or forgery; or, if for some infamous offence, he hath received judgment of the pillory, or to be branded, whipped, or stigmatized. A juror may himself be examined on oath of *vir dire, veritatem docere*, (to tell the truth) with regard to such causes of challenge, as are not to his disonor, or discredit; but not with regard to any crime, or any thing that tends to his disgrace, or disadvantage. There are other causes to be made use of by the jurors themselves, which are matter of exception, whereby their service is excused, and not excluded.—(a.)

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## JUSTICE OF THE PEACE.

THE power, office, and duty of a justice of the peace, depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission first empowers him singly, to conserve the peace, and thereby gives him all the power of the ancient conservators of the peace, in suppressing riots, and affrays, in taking securities for the peace, and in apprehending and committing felons, and other inferior criminals. The form of the commission was settled by all the judges, A. D. 1590; which appointed them all jointly and severally to keep the peace, and any two, or more, of them, to inquire of,

(a)—*S Bl, Com. p. 362, &c.*

and determine, felons, and other misdemeanors; in which number, some particular justices, or one of them, were directed to be always included; and no business to be done without their presence; the words of the commission running thus: "quorum aliquem vestuem, A. B. C. D. &c. unum esse volumus," (of whom some of your A. B. C. D. &c. we desire to be one;) whence, the persons so named, are usually called justices of the quorum.—(a.)

## LARCENY.

LARCENY, or theft, is distinguished into two sorts: the one called simple larceny, or plain theft, unaccompanied with any other atrocious circumstances; and mixed, or compound, larceny, which also includes in it the aggravation of a taking from one's house, or person. Simple larceny, where it is the stealing of goods above the value of twelve pence, is called grand larceny; when of goods to that value, or under, is petit larceny. Simple larceny, is the felonious taking, and conveying away, of the personal goods of another: And, 1st, there must be a taking. This implies the consent of the owner to be wanting; therefore, no delivery of the goods from the owner to the offender, upon trust, can ground a larceny: as, if A lends B a horse, and he rides away with him; or if I send goods by a carrier, and he carries them away, these are no larcenies. But, if the carrier opens a bale, or pack of goods, or pierces a vessel of wine, and takes away a part thereof; or, if he carries it to the place appointed, and afterwards takes away the whole; these are larcenies, for here the felonious intent is manifest. But bare non-delivery shall not be, of course, intended to arise from a felonious design; since that may happen from a variety of other accidents. Nor is it larceny in any servant to run away with the goods committed to him to keep, but only a breach of civil trust. There must also be a carrying away. A bare removal from the place, in which he found the goods, though the thief does not quite make off with them, is a sufficient carrying away: as, if a man be leading another's horse out of a close, and be apprehended in the fact; or, if a guest stealing goods out of an inn, has removed them from his chamber, down stairs; these have been adjudged sufficient carryings away to constitute a larceny; or, if a thief intending to steal plate, takes it out of a chest, in which it was, and lays it down upon the floor, but is

(a)—1 Bl. Com. p. 351-3.

Surprized before he can make his escape with it, this is larceny. The taking and carrying away must also be felonious; that is, done with an intent to steal: And the ordinary discovery of a felonious intent is, where the party doth it clandestinely, or being charged with the fact, denies it. But this is by no means the only criterion of criminality; for, in cases that may amount to larceny, the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to recount all these, which may evidence a felonious intent; whereupon, they must be left to the due and attentive consideration of the court and jury. This felonious taking and carrying away must be of the personal goods of another; for if they are things real, or savor of the realty, larceny cannot be committed. Things adhering to the freehold, as corn, grass, trees, and the like, or lead upon a house, cannot be the subjects of larceny; but the severance of them is merely a trespass: And if they are severed by violence, so as to be changed unto moveable, and at the same time, by one continued act, carried off by the person, who severed them, they cannot be said to be taken from the proprietor in this their newly acquired state of mobility, (which is essential to the nature of larceny) being never, as such, in the actual or constructive possession of any one, but of him who committed the trespass. But if the thief severs them at one time, whereby the trespass is committed, and they are converted into personal chattels, in the constructive possession of him, on whose soil they are left, or laid; and comes again at another time, when they are so turned into personality, and takes them away, it is larceny, and so it is, if the owner, or any one else, has severed them. Larceny cannot be committed of animals, in which there is no property, either absolute, or qualified; as beasts, &c. that were wild and unreclaimed; but, if they are reclaimed, or confined, and may serve for food, it is otherwise; for if deer be so inclosed in a park, that they may be taken at pleasure, fish in a trunk, and pheasants, or partridges, in a mew, larceny may be committed. It is also said, that if swans be lawfully marked, it is felony to steal them, though in a public river; and that it is likewise felony to steal them, though unmarked, if in any private river, or pond, otherwise it is only a trespass. But of valuable domestic animals, as horses and beasts of draught, and of all animals of a tame nature, which serve for food, as neat, or other cattle, swine, poultry and the like, and of their fruit or produce, taken from them, while living, as milk, or wool, larceny may be committed; and also of the flesh of such as are either of a tame, or wild, nature, when killed. As to those animals, which do not serve for food, and which, therefore, the law holds to have no intrinsic value, as dogs of all sorts, and other creatures kept for whim, or pleasure, though a man may have a loose property therein, and

**LEGACY.**

maintain a civil action for the loss of them; yet they are not of such estimation, that the crime of stealing them amounts to larceny. Petit larceny is punished only by imprisonment, or whipping; but the punishment of grand larceny, or the stealing above the value of twelve pence, (which sum was the standard in the time of king Athelstan, in the tenth century) is regularly death.—(a.)

**LEGACY.**

A legacy is a bequest, or gift, of goods and chattels, by testament; and the person, to whom it is given, is styled the legatee; which every person is capable of being, unless particularly disabled. This bequest transfers an incheate property to the legatee; but the legacy is not perfect without the assent of the executor; for, if I have a general, or pecuniary legacy, of one hundred pounds, or a specific one of a piece of plate, I cannot, in either case, take it, without the consent of the executor. For in him all the chattels are vested; and it is his business, first of all, to see whether there is a sufficient fund left to pay the debts of the testator, and in case of a deficiency of assets, all the general legacies must abate proportionably, in order to pay the debts; but a specific legacy (or piece of plate, a horse, or the like) shall not abate, unless there be not sufficient without it. Upon the same principle, if the legatees had been paid their legacies, they are afterwards bound to refund a rateable part in case debts come in, more than sufficient to exhaust the residue after payment of the legacies. If the legatee dies before the testator, the legacy, is a lost, or lapsed legacy, and shall sink into the residue: And if a contingent legacy be left to any one, as when he attains, or if he attains the age of twenty-one, and he dies before that time, it is a lapsed legacy; but a legacy to one, to be paid, when he attains the age of twenty-one years, is a vested legacy; an interest, which commences immediately, though to be paid at a future time: And if the legatee dies before that age, his representatives shall receive it out of the testator's estate, at the same time that it would have been payable, in case the legatee had lived. In case of a vested legacy due immediately, and charged on land, or money, in the funds, which yield an immediate profit, interest shall be payable there-

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(a)—4 Bl. Com. p. 229, &c. Larceny may be committed of goods obtained from the owner by the delivery, if it be done with a felonious intent: 2 Nott & McCord, p. 90.

on, from the testator's death; but if charged only on the personal estate, which cannot be immediately got in, it shall carry interest only from the end of the year after the death of the testator.—(a.)

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### LIBEL.

A libel is a malicious defamation of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, and to expose him to public hatred, contempt, and ridicule; the direct tendency whereof, is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. The communication of a libel to any one person, is a publication in the eye of the law; and the sending of an abusive private letter to a man is as much a libel, as if it were openly printed; for it equally tends to a breach of the peace. For the same reason, it is immaterial with respect to the essence of a libel, whether the matter of it be true, or false; since the provocation, and not the falsity, is the thing to be punished criminally; tho' doubtless, the falsehood of it may aggravate its guilt, and enhance its punishment. In a civil action, a libel must appear to be false, as well as scandalous; for if the charge be true, the plaintiff has received no private injury, and has no ground to demand a compensation for himself, whatever offence it may be against the public peace; and therefore, in a civil action, the truth of the accusation may be pleaded in bar of the suit. But, in a criminal prosecution, the tendency, which all libels have, to create animosities, and to disturb the public peace, is the whole, that the law considers. And therefore, in such prosecutions, the only points to be enquired into are, first, the making, or publishing, of the book, or writing; and, secondly, whether the matter be criminal; and if both these points are against the defendant, the offence against the public is complete. The punishment for such libels, for either making, repeating, printing, or publishing the libel, is fine, and such corporal punishment, as the court, in its discretion, shall inflict; regarding the quantity of the offence, and the quality of the offender.—(b.)

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(a)—2 Bl. Com. pp. 512-13. (b)—4 Ibid. p. 150.

## LIEN.

THE doctrine in favor of liens, the courts, of late years, have much leaned to, for convenience; allowing it, first, where there is an express contract to that effect; and secondly, where it is implied, either from the usage of the trade, or the manner of dealing between the parties: As 1st, A factor has a lien upon goods consigned to him, not merely for what is due for those goods, but for a balance of a general account; for which he may retain them. So he has a lien on the money in the hands of the lawyer. And where goods had been consigned to a factor by a trader, and the factor knew the trader was in insolvent circumstances, but he, nevertheless, advanced him money on the credit of the goods, it was adjudged, that he was entitled to a lien upon them, for the money he had advanced, and should hold them against the assignees of the consignor. 2d, In the case of manufacturers, the lien, which they have upon the goods entrusted to them to manufacture, is not a general one, but confined to the work done to the goods themselves, unless express use of the trade is proved to the contrary. As, where the bankrupt was a flour factor, and had employed the petitioner, who was a miller; and he having always a large quantity of corn in his hands, and a great number of sacks, had, relying on these as a security, trusted the bankrupt very largely; and when he became bankrupt, he owed to the petitioner, for grinding done before, two hundred and eighty-six pounds, and sixteen pounds for grinding corn then in hands, which corn and the sacks the petitioner insisted on holding for his debt. But lord Hardwicke held, that, as the petitioner had shown no general custom for a lien, it only depended on the bailment proceeding from a delivery of goods for a particular purpose, which could not be extended beyond the work done to the goods themselves. So that a manufacturer, that takes in goods, for a particular purpose, (as to dye them,) has a lien on them for the work done to the goods themselves; but cannot retain them for any other demand against the owner of the goods.

But the usage of trade will create a general lien. As where it was proved to be the usage for packers to lend money to clothiers, and the clothes left to be packed were considered as a pledge, not only for the packing, but for the loan of the money also; and here the bankrupt, who was a clothier, having borrowed money on a note of hand, from the petitioner, who was a packer, but at a time, when he had no dealings with him, and the bankrupt having afterwards sent him cloth to pack, it was held, that he might retain the cloth for the debt, as well as the price of packing. 3d, In the case of pawns; the pawning, from

the nature of the transaction, creates a lien. As where a testator had borrowed a sum of money upon jewels, and afterwards borrowed three several sums, for each of which he gave his note, without taking any notice of the jewels, it was determined that the borrower's executors should not redeem the jewels, without paying the money due on the notes; for it must be presumed, that the pawnee trusted to the pledge he had in his hand, by the money being lent subsequent to the pawning, which excluded the presumption of any trust to the person; but if the loan had been prior to the pawning, there had been no lien. But though the act of pawning creates a lien, in favor of the pawnee, yet it cannot give him a greater interest in the thing pawned, than the pawner himself had. Therefore, where a tenant for life, of plate, pawned it to a pawn-broker, and died, it was adjudged, that, though the pawn-broker had no notice of the property the person pawning had in the thing, he could have no lien on the plate, against him, in remainder.

4th, An inn-keeper hath, by law, a right to detain a horse, left with him, 'till he is paid for his keeping; for, as he is by law compellable to receive a guest and his horse, so he shall have this remedy. And though the horse had been brought to the inn by a stranger, without the owner's knowledge, and was afterwards claimed by the owner, yet it was held, that the inn-keeper might, notwithstanding, keep the horse 'till paid; for so by pretended ignorance that his horse was sent to an inn, might the owner defraud the inn-keeper, by getting his keeping for nothing. So that, to give this right of retainer, it is not necessary that the owner should be a guest; for merely leaving his horse at an inn gives this right of retainer, 'till paid for his keeping, to the inn-keeper. But, this power of retaining, is only while the horse remains in the inn-keeper's possession; for if he suffers the horse to be taken away, and the horse is brought again to his inn, he cannot retain him for the former demand. And this privilege of retainer is confined to inn-keepers; for a livery-stable keeper has no such privileges to detain a horse for his keeping; for it is allowed to inn-keepers on the ground of their being obliged to keep guests and their horses; but that is not the case of livery-stable keepers, who rely on the contract.

5th, So a carrier may detain goods entrusted to him to carry, 'till he is paid for their carriage.

6th, An attorney has a lien on the papers, &c. of his client, and may retain them 'till paid his bill of costs. But this right of lien being admitted for the benefit of trade, it shall be confined, in its operation, to that only: And, in general, no person can, in any case, retain, where there is a special agreement to pay; for then, the other party is personally liable. For, where the defendant, who was a farrier, undertook to cure the plaintiff's mare, for a certain sum, he performed the cure, and then

**MARRIAGE.**

refused to deliver her up till paid for keeping and cure, the plaintiff brought trover for the mare; when it was adjudged, that, having made an agreement for a certain sum, he must sue on the agreement, and had no right to retain the mare till he was paid.—(n.)

**MARRIAGE.**

THIS is considered in no other light than as a civil contract, and the law treats it as it does all other contracts; allowing it to be good and valid in all cases, where the parties, at the time of making it, were, in the first place, willing to contract; secondly, able to contract; and lastly, actually did contract in the proper forms and solemnities required by law. First, they must be willing to contract: *consensus, non concubitus, fact nuptias,* (consent, and not cohabitation, constitutes marriage); secondly, they must be able to contract. In general, all persons are able to contract themselves in marriage, unless they labor under some particular disabilities, and incapacities. These make the contract void ab initio, (from the beginning), and not merely voidable: not that they dissolve a contract already formed, but they render the parties incapable of forming any contract at all; they do not put asunder those who are joined together, but they previously hinder the junction: 1st, The first of these disabilities is, a prior marriage, or having another husband, or wife living; in which case, besides the penalty consequent upon it as a felony, the second marriage is, to all intents and purposes, void: 2d, The next legal disability is want of age. This is sufficient to avoid all other contracts, on account of the imbecility of judgment in the parties contracting; and therefore it ought to avoid this, the most important of all. So, if a boy under fourteen, or a girl under twelve, years of age, marries, this marriage is only inchoate, and imperfect: and when either of them comes to the age of consent aforesaid, they may disagree, and declare the marriage void: and it is so far only a marriage, that, if at the age of consent, they agree to continue together, they need not be married again. If the husband be of years of discretion, and the wife under twelve, when she comes to years of discretion, he may disagree, as well as she may: for, in contracts, the obligation must be mutual; both must be bound, or neither; and so it is, vice versa, when the wife is of years of discretion, and the husband under. 3d, A

(a)—Espinasse's *Nisi Prius*, 582, &c.

third incapacity is want of reason; without a competent share of which, as no other, so neither can the matrimonial contract be valid. Lastly, the parties must not only be willing and able to contract, but must actually contract themselves in due form of law, to make it a good civil marriage. It is said that Pope Innocent, the third, was the first that ordained the celebration of marriage in the church; before which, it was totally a civil contract. And in the times of the grand rebellion, all marriages were performed by the justices of the peace. Upon the whole, we may collect, that no marriage is *ipse facto* void, that is celebrated between single persons, consenting, of sound mind, and of the age of fourteen years in males, and twelve in females. (a.)

A divorce, *a mensa et thoro*, is, where the marriage is just and lawful, *ab initio*, and therefore the law is tender of dissolving it; but, for some supervenient cause, it becomes improper, or impossible, for the parties to live together: as in the case of intolerable ill temper, or adultery in either of the parties. In this case, the law allows alimony to the wife; which is that allowance, which is made to a woman for her support, out of the husband's estate; being settled at the discretion of the court, on consideration of all the circumstances of the case.—(b.)

By marriage, the husband and wife are one person in law, that is, the very being, or legal existence of the woman is suspended during the marriage; or, at least, is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing, and is therefore called in law-French *a femme covert*; and her condition, during her marriage, is called her *coverture*. Upon this principle of an union of person in husband and wife, depend almost all the legal rights, duties and disabilities, that either of them acquires by the marriage. For this reason, a man cannot grant any thing to his wife, or enter into any covenant with her; for the grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself. And therefore, it is also generally true, that all compacts made between husband and wife, when single, are voided by the intermarriage. A woman, indeed, may be attorney for her husband; for that implies no separation from, but is rather a representation of her-husband. And a husband may also bequeath any thing to his wife by will, for that cannot take effect till the *coverture* is determined by his death. The husband is bound to provide his wife with necessaries, as much as himself, and if she contracts debts for them, he is obliged to pay them; but, for any thing besides necessaries, he is not chargeable. But if a wife elopes, and lives with another man, the husband is not chargeable even for necessaries; at least, if the person who

(a)—1 Bl. Com. p. 433, &c. (b)—ibid. p. 440.

furnishes them is sufficiently apprised of her elopement. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt; for he has adopted her, and her circumstances together. [But, at her death, the relation being dissolved, he is under no further obligation.]—(c.) If the wife be injured in her person, or her property, she can bring no action for redress without her husband's concurrence, and *in his name* as well as her own; neither can she be sued, without making the husband defendant. In criminal prosecutions, it is true, the wife may be indicted, and punished separately, for the union is only a civil union. But in trials of any sort, they are not allowed to be evidence for, or against, each other; partly, because it is impossible their testimony should be indifferent; but, principally, because of the union of persons; and therefore, if they were admitted to be witnesses for each other, they would contradict one maxim of law, that no person ought to be a witness in his own case: and if against each other, they would contradict another maxim, that no person is bound to accuse himself. But where the offence is directly against the person of the wife, this rule has been usually dispensed with; and, in some instances, the wife is separately considered, as inferior to the husband, and acting by his compulsion. And therefore, all deeds executed, and acts done by her, during coverture, are void; except it be some matter of record; in which case, she must be solely and secretly examined, to learn if her act be voluntary. She cannot make a will, unless under special circumstances; being at the time of making it, supposed to be under the coercion of her husband. And, in some felonies, and inferior crimes committed by her, through constraint of her husband, the law excuses her. (d.) But a feme covert may purchase an estate without the consent of her husband, and the conveyance is good during the coverture, till he avoids it by some act declaring his dissent; and though he does nothing to avoid it, or even, if he actually consents, the feme covert herself, may, after the death of her husband, waive, or disagree to the same; nay, even his heirs may waive it after her, if she dies before her husband, or if, in her widowhood, she does nothing to express her consent, or agreement.—(e.)

By marriage, those chattels which belonged formerly to the wife, are, by act of law, vested in the husband, with the same degree of property, and with the same powers as the wife, when sole, had over them. And this also depends entirely on the notion of an unity of person between the husband and wife. In a real estate, he only gains a title to the rents and profits during coverture; but in chattel interests, the sole and absolute property vests in the husband, to be disposed of at his pleasure, if he

(c)—1 Bl. Com. p. 448. (d)—Ibid. p. 433, &c. (e)—2 BL Com. p. 292.

chooses to take possession of them: for, unless he reduces them to possession, by exercising some act of ownership upon them, no property vests in him, but they shall remain to the wife, or to her representatives, after the coverture is determined. A chattel real, vests in the husband, not absolutely, but sub modo.—As in case of a lease for years, the husband shall receive all the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it during the coverture; it is liable to execution for his debts; and, if he survives his wife, it is, to all intents and purposes, his own; yet, if he has made no disposition thereof in his life time, and dies before his wife, he cannot dispose of it by will; for the husband having made no alteration in the property during his life, it never was transferred from the wife; but after his death, she shall remain in her ancient possession, and it shall not go to his executors. So it is also of chattels personal, or choses in action, as debts upon bond, contracts, and the like: there the husband may have, if he pleases; that is, if he reduces them into possession, by receiving, or recovering them at law. And, upon such receipt, or recovery, they are absolutely and entirely his own, and shall go to his executors, or administrators, or as he shall bequeath them by will, and shall not revert in the wife. But, if he dies before he has received, or reduced them into possession, so that at his death they still continue choses in action, they shall survive to the wife; for the husband never executed the power he had, of obtaining an exclusive property in them. The husband cannot devise, by his will, such ornaments and jewels of his wife, though during his life, perhaps he hath the power, (if unkindly disposed to exert it,) to sell, or give them away, as she has continued in the use of them till his death; but she shall afterward retain them against his executors and administrators; and all other persons except creditors, where there is a deficiency of assets. And her necessary apparel is protected even against the claim of creditors.—(g.)

The injuries that may be offered to a person, considered as a husband, are, principally three: abduction, or taking away a man's wife; adultery, or criminal conversation with her; and beating, or otherwise abusing her: 1st, as to the first sort, abduction, or taking her away; this may be either by fraud and persuasion, or open violence, though the law, in both cases, supposes constraint and force, the wife having no power to consent; and therefore gives a remedy by writ of ravishment, or action of trespass *vi et armis, de uxore rapta et abducta*: whereby the husband shall recover, not the possession of his wife, but damages for taking her away. And the husband is also entitled to recover damages in an action on the case, against such as

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(g)—2 Bl. Com. p. 433, &c.

persuade and entice the wife to live separate from him without a sufficient cause: 2d, Adultery, or criminal conversation with a man's wife, though not cognizable by our courts, as a public crime, is yet considered as a civil injury, and the law gives a satisfaction to the husband for it, by action of trespass *vi et armis*; wherein the damages recovered are usually very large and exemplary. But these are properly increased, or diminished, by circumstances; as the rank and fortune of the plaintiff and defendant, the relation or connection between them, the seduction, or otherwise, of the wife, founded on her previous behavior and character, and the husband's obligation, by settlement, or otherwise, to provide for those children, which he cannot but suspect to be spurious. In this case, and upon indictments for polygamy, a marriage, in fact, must be proved; though generally, in other cases, reputation and cohabitation are sufficient evidence of marriage: 3d, The third injury is, that of beating a man's wife, or otherwise ill using her; for which, if it be a common assault, battery, or imprisonment, the law gives the usual remedy to recover damages, by action of trespass *vi et armis*; which must be brought in the names of the husband and wife, jointly: but if the beating, or other maltreatment, be very enormous, so that, thereby, the husband is deprived, for any time, of the company and assistance of his wife, the law then gives him a separate remedy, by an action of trespass, in nature of an action on the case, for this ill usage, *per quod consortium amisit*, in which he shall recover a satisfaction in damages.—(h.)

Where a husband has deserted, and abandoned his wife, she will be considered as a *feme-sole*; and if he has not been heard of for five or six years, his death will be presumed.—(i.)

A *feme-sole* indebted, takes husband; it is then the debt of the husband and wife, and both are to be sued for it: but the husband is not liable after the death of the wife, unless there be a judgment against both during the coverture.—(k.)

### MASTER AND SERVANT.

THE master may maintain, that is, abet and assist his servant in any action at law against a stranger; whereas, in general, it is an offence against public justice, to encourage suits and animosities, by helping to bear the expense of them; and is

(h)—3 Bl. Com. p. 139, &c. (i)—2 Mill, p. 282, Cusack and ux. vs. White.  
(k)—Jacob's Law Dictionary.

called in law, maintenance. A master also may bring an action against any man, for beating, or maiming his servant; but in such case, he must assign, as a special reason for so doing, his own damage by the loss of his service; and this must be proved upon the trial. A master, likewise, may justify an assault in defence of his servant, and a servant, in defence of his master. Also, if any person do hire, or retain my servant, being in my service, for which the servant departeth from me, and goeth to serve the other, I may have an action for damages against both the new master and servant, or either of them; but if the new master did not know that he was my servant, no action lies; unless he afterward refuse to restore him, upon information and demand. The reason and foundation, upon which all this doctrine is built, seem to be the property that every man has in the service of his domestics, acquired by the contract of hiring, and purchased by giving them wages. As for those things, which a servant may do, on behalf of his master, they seem all to proceed upon this principle, that the master is answerable for the act of his servant, if done by his command, either expressly given, or implied: nam qui facit per alium, facit per se, (for he, who causes an act to be done by another, is considered as doing it himself;) therefore, if the servant commit a trespass, by the command, or encouragement of his master, the master shall be guilty of it; though the servant is not thereby excused; for he is only to obey his master in things that are honest and lawful. If an inn-keeper's servant rob his guest, the master is bound to restitution; for, as there is a confidence reposed in him, that he will take care to provide honest servants, his negligence is a kind of implied consent to the robbery; nam, qui non prohibet, cum prohibere possit, jubet, (for he, who does not hinder a thing from being done, when it is in his power to do so, is considered as commanding it to be done.) So, likewise, if the drawer at a tavern, sells a man bad wine, whereby his health is injured, he may bring an action against the master; for though the master did not expressly order his servant to sell it to that person in particular, yet his permitting him to draw, and sell it at all, is, impliedly, a general command. In the same manner, whatever a servant is permitted to do, in the usual course of his business, is equivalent to a general command. If I pay money to a banker's servant, the banker is answerable for it; but if I pay it to a clergyman's, or physician's servant, whose usual business it is not to receive money for his master, and he embezzles it, I must pay it over again. If a steward lets a lease of a farm, without the owner's knowledge, the owner must stand to the bargain; for this is the steward's business. A wife, a friend, a relation, that use to transact business for a man, are quod hoc, (as to this) his servants; and the principal must answer for their conduct; for the law implies, that they act

under a general command; and without such a doctrine as this, no mutual intercourse between man and man could subsist with any tolerable convenience. If I usually deal with a tradesman, by myself, or constantly pay him ready money, I am not answerable for what my servant takes up upon trust; for here is no implied order to the tradesman, to trust my servant; but, if I usually send him upon trust, or sometimes on trust and sometimes with ready money, I am answerable for all he takes up, for the tradesman cannot possibly distinguish when he comes by my order, and when he comes upon his own authority. If a servant, by his negligence does any damage to a stranger, the master shall answer for his neglect. But, in this case, the damage must be done, while he is actually employed in the master's service. And a master is chargeable if any of his family layeth, or casteth any thing into the street, or common highway, to the damage of any individual, or the common nuisance of the people; for the master hath the superintendance and charge of all his household.—(a.)

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### MAYHEM.

**MAYHEM** is the violently depriving another of the use of such of his members, as may render him less able in fighting; either to defend himself, or to annoy his adversary; and therefore, the cutting off, or disabling, or weakening, a man's hand, or finger, or striking out his eye, or fore tooth, or depriving him of those parts, the loss of which, in all animals, abates their courage, are held to be mayhem. But cutting off his ear, or nose, or the like, is not mayhem; because it does not weaken, but only disfigures him. This offence is punished with fine and imprisonment.—(b.)

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### NUISANCE.

Nuisances are of two kinds; public, or common nuisances, which affect the public; and private nuisances, which may be defined, any thing done to the hurt, or annoyance of the lands, tenements, or hereditaments of another; as if a man builds a house so close to mine, that his roof overhangs my roof, and throws the water off his roof upon mine; this is a measure, for

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(a)—1 Bl. Com. p. 428, &c. (b)—4 Ibid. 205.

which an action will lie. Or if a person keeps his hogs, or other noisome animals, so near the house of another, that the stench of them inconveniences him, and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbor sets up, and exercises any offensive trade; as a tanner's or tallow-chandlers, or the like; for those are lawful and necessary trades, yet they should be exercised in remote places; for the rule is *sic utere tuo, ut alienum non laedas*, (use your own property in such a manner, as not to injure another's;) so that the nuisances that affect a man's dwelling, may be reduced to these two: 1st, overhanging it; which is also a species of trespass; for *enjus est solum, ejus est usque ad cælum*, (he who owns the soil, owns all above.) 2d., Corrupting the air with noisome smells; for air is an indispensable requisite to every dwelling. As to nuisance to one's lands, if one erects a smelting house for lead, so near the land of another, that the vapour, and smoke, kills his corn and grass, and damages his cattle therein, this is held to be a nuisance; for it is incumbent on him to find some other place, to do that act, where it will be less offensive. It is a nuisance to stop, or divert water, that uses to run to another's meadow, or mill; to corrupt, or poison a water course, by erecting a dye-house, or lime-pit, for the use of trade, in the upper part of the stream; or, in short, to do any act therein, that, in its consequences, must necessarily tend to the prejudice of one's neighbor: so closely does the law enforce that excellent rule of gospel morality, of "doing to others what we would they should do unto ourselves." If a ferry is erected on a river so near another ancient ferry, as to draw away its custom, it is a nuisance to the owner of the old one; for where there is a ferry by prescription, (or, in other words, by lawful authority) the owner is bound to keep it always in repair, and readiness, for the ease of all the people; otherwise he may be grievously removed: it would, therefore, be extremely hard, if a new ferry were suffered to share his profits, which does not also share his burthen. But, where the reason ceases, the law also ceases with it; therefore, it is no nuisance to erect a mill so near mine, as to draw away the custom, unless the mill also interrupts the water; nor is it a nuisance to set up a trade, or a school, in neighborhood, or rivalry with another; for, by such emulation, the public are like to be gainers; and if the new mill, or school, occasion a damage to the old one, it is *damnum alsquo injuria*, (a damage without a wrong.) And it might be added, the miller and school-master are not bound to keep up their establishments, as the ferryman is.

The remedies of suit are: 1st, by action on the case for damages, in which the party injured shall only recover a satisfaction for the injury sustained; but cannot thereby remove the nui-

sance: indeed, every continuance of a nuisance is held to be a fresh one; and, therefore, a fresh action will lie, and very exemplary damages will probably be given, if, after one verdict against him, the defendant has the hardiness to continue it. Yet the law does not rely upon probabilities merely, and has, therefore, provided another action, the assise of nuisance;† a writ, wherein it is stated, that the party injured complains of some particular fact done, ad documentum tenementi sui, (to the damage of his freehold,) and therefore commanding the sheriff to summon an assise, that is a jury, and view the premises, and have them at the next court, that justice may be done therein. And if the assise is found for the plaintiff, he shall have judgment of two things: 1st, that the nuisance shall be abated; 2d, to recover damages. So that recourse may at last be had to a remedy, which will effectually conquer the defendant's perverseness, by sending the sheriff with his posse comitatus to level it. But this latter remedy will lie only against the very wrongdoer himself, who levied, or did, the nuisance. (a) Nuisances may also be removed, by the mere act of the party injured, or aggrieved, provided he commits no riot in the doing of it. And the reason, why the law allows this private and summary method of doing one's self justice is, because injuries of this kind, which obstruct, or annoy such things as are of daily convenience and use, require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice. (b) Common nuisances are such inconvenient and troublesome offences, as annoy the whole community in general, and not merely some particular person; and therefore, are indictable only, and not actionable: as it would be unreasonable to multiply suits, by giving every man a separate right of action, for what diminishes him in common only with the rest of his fellow citizens. Of this nature are: 1st, annoyances in high ways, bridges, and public rivers, by rendering the same inconvenient, or dangerous to pass; either positively, by actual obstructions, or negatively, by want of reparations. For both of these, the persons so obstructing, or such individuals as are bound to repair and cleanse them, may be indicted, distrained to repair and amend them, and, in some cases, fined. Where there is a house erected, or an enclosure made, upon any part of the public lands, or of an highway, or common street, or public water, it is properly called a purpresture. All these kinds of nuisances, such as offensive trades, and manufactures, which, when injurious to a private man, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity of the misdemeanor; and, particular-

† It is believed this remedy has never been used in this state. (a)—S Bl. Com. p. 216, &c. (b)—Ibid. pp. 5, 6.

ly the keeping of hogs in any city, or market-town, is indictable as a public nuisance. All disorderly inns, or ale-houses, bawdy-houses, gaming-houses, stage-players, unlicensed booths, and stages for rope-dancers, mountebanks, and the like, are public nuisances; and may, upon indictment, be suppressed, and fined. Inns, in particular, being intended for the receipt and lodging of travellers, may be indicted, and suppressed, and the inn-keepers fined, if they refuse to entertain a traveller without a very sufficient cause. Eaves-droppers, or such as listen under walls and windows, or the eaves of a house, to hearken after discourse, and therewithal to raise slanderous and mischievous tales, are a common nuisance, and indictable; and may be punished by fine, and finding sureties for their good behavior. And a common scold, communis vixatrix, is a public nuisance to her neighborhood; for which offence she may be indicted, and, if convicted, shall be sentenced to be placed in a certain engine called a cuckling-stool, and plunged in the water for her punishment; and hence it is frequently corrupted into ducking-stool.—(a.)

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**OFFICE.**

A ministerial office may be executed by deputy; but a judicial one cannot.—(b.)

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**ORDINARY.**

The usual course of proceeding in this court is, 1st, by citation, to call the party injuring before them; then by libel, (libellus) or little book, or by articles drawn out in a formal allegation, to set forth the complainant's ground of complaint. To this succeeds the defendant's answer, upon oath, when, if he denies, or extenuates, the charge, they proceed to proof by witnesses examined, and their depositions taken down in writing. If the defendant has any circumstances to offer in his defence, he must also propound them in what is called his defensive allegation, upon which, he is entitled, in his turn, to the plaintiff's answer upon oath, and may, from thence, proceed to proof, as

(a)—4 Bl. Com. p. 166, &c. (b)—See estates on condition implied.

## PARENT AND CHILD.

well as his antagonist. When all the pleadings and proofs are concluded, they are referred to the consideration, not of a jury, but of a single judge; who takes information by hearing advocates on both sides, and thereupon forms his interlocutory decree, or definitive sentence, at his own discretion. But this court has no power of enforcing its sentence, when pronounced.—(c.)

If an ordinary, at the time of granting letters of administration, neglect to take a bond, and security, as the law directs, he becomes security himself, and is liable to parties interested in the estate. If he take a bond and security from the administrator, at a subsequent period, though it may be an indemnity to himself, yet it is not such a bond as the law directs, and does not save him from responsibility to persons interested. And though the party may sue on such a bond, and recover, so far as the obligor's property may extend, it is no waiver of the remedy against the ordinary, but the balance may be recovered from him.—(d.)

The decree of a court of ordinary, on a matter within its jurisdiction, is conclusive, until reversed by the order of a superior tribunal; and this can only be done on an appeal to the court of common pleas.—(e.)

The probate of a will, in common form, may be revoked, either on a suit by citation, or an appeal; at any time within thirty years.—(e.)

## PARENT AND CHILD.

THE duties of parents to legitimate children consist, principally, in three particulars: their maintenance, protection, and education. The duty of parents to provide for the maintenance of their children, is a principle of natural law: an obligation laid on them, not only by nature herself, but by their own proper act in bringing them into the world; for it would be, in the highest manner, injurious to their issue, if they only gave the children life, that they might afterwards see them perish. By begetting them, therefore, they have entered into a voluntary obligation, to endeavor, as far as in them lies, that the life they have bestowed, shall be supported and preserved: And thus, the children will have a perfect right of receiving maintenance from their parents. But no person is bound to provide a main-

(c)—2 Bl. Com. p. 100. (d)—Boggs vs. Hamilton: 2 Mill, p. 382. (e)—<sup>2</sup>  
Nott & McCord, p. 326; Brown ad. Gibson,

tenance for his issue, unless where the children are impotent and unable to work, either through infancy, disease, or accident. Protection is also a natural duty, but rather permitted than enjoined by any municipal laws: nature, in this respect, working so strongly, as to need rather a check than a spur. A parent may maintain and uphold his children in their law suits, without being guilty of the legal crime of maintaining quarrels. A parent may also justify an assault and battery, in defence of the person of his children; nay, where a man's son was beaten by another boy, and the father went near a mile to find him, and then revenged his son's quarrel, by beating the other boy, of which beating afterwards he unfortunately died, it was not held to be murder, but manslaughter only: such indulgence does the law shew to human frailty, and the workings of parental affection. The last duty of parents to their children is that of giving them an education suitable to their station in life; a duty pointed out by reason, and of far the greatest importance of any; yet the municipal laws of most countries seem to be defective in this point, by not constraining the parent to bestow a proper education upon his children. Perhaps they thought it punishment enough to leave the parent, who neglects the instruction of his family, to labor under those griefs and inconveniences, which his family, so uninstructed, will be sure to bring upon him.

The power of parents over their children is given them, partly to enable the parents to perform their duty, and partly as a recompense for their care and trouble in the faithful discharge of it. A parent may lawfully correct a child, being under age, in a reasonable manner; for this is for the benefit of his education. He may have the benefit of his children's labor, while they live with him, and are maintained by him; but this is no more than he is entitled to from his apprentices and servants. The legal power of a father, (for the mother, as such, is entitled to no power, but only to reverence and respect) over the persons of his children, ceases at the age of twenty-one. He may delegate a part of his parental authority, during his life, to the tutor, or school-master of his child; who is then in the place of a parent; and has such a portion of the power of the parent committed to his charge, viz: that of restraint and correction, as may be necessary to answer the purposes, for which he is employed. But a father has no power over his son's estate; for though he may receive the profits during the child's minority, yet he must account for them, when he comes of age. The duties of children to their parents arise from a principle of natural justice, and retribution; for, to those who gave us existence, we naturally owe subjection and obedience during our minority, and honor and reverence ever after; they, who protected the weakness of our infancy, are eq-

## PERSONAL ACTIONS.

titled to our protection in the infirmity of old age; they, who by sustenance and education, have enabled their offspring to prosper, ought, in return, to be supported by that offspring, in case they stand in need of assistance. Upon this principle proceeds all the duties of children to their parents, which are enjoined by positive laws.—(a.)

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### PERJURY,

Is a crime committed, where a lawful oath is administered in some judicial proceeding, to a person who swears wilfully, absolutely, and falsely, in a matter material to the issue, or point in question. The law takes no notice of any perjury, but such as is committed in some court of justice, having power to administer an oath; or before some magistrate, or proper officer, invested with a similar authority, in some proceedings relative to a civil suit, or a criminal prosecution; for it esteems all other oaths unnecessary, at least, and, therefore, will not punish the breach of them. The perjury must also be corrupt, that is, committed *malo animo*, (with an evil intent) wilful, positive, and absolute; not upon surprize, or the like. It must also be in some point material to the question in dispute; for if it only be in some trifling collateral circumstance, to which no regard is paid, it is not penal. Subornation of perjury is the offence of procuring another to take such a false oath, as constitutes perjury in the principal. The punishment of perjury and subornation is fine and imprisonment; and never more to be capable of bearing testimony.—(b.)

On an indictment for perjury, two witnesses are not necessary to disprove the fact sworn to by the defendant; but where there is but one witness, in addition to his testimony, some other independent evidence ought to be adduced.—(c.)

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## PERSONAL ACTIONS.

In actions merely personal, arising from wrongs actually done, or committed, by the defendant, as trespass, battery, and slander, the rule is, that "a personal action dies with the person," and it shall never be revived either by, or against, the executors, or other representatives.—(d.)

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(a)—1 Bl. Com. p. 446, &c. (b)—4 Ibid. p. 137. (c)—1 Nott & McCord, p. 549. State vs. Haywood. (d)—3 Bl. Com. p. 302.

## PROPERTY IN THINGS PERSONAL.

\***PROPERTY** in chattels personal, may be either in possession, or in action; and of these, the former, or property in possession, is divided into two sorts; an absolute and a qualified property. Property in possession absolute, is where a man hath, solely and exclusively, the right, and also the occupation of any moveable chattels, so that they cannot be transferred from him, or cease to be his, without his own act, or default. Such may be all inanimate things, as goods, plate, money, jewels, and the like; such also, may be all vegetable productions, as the fruit, or other parts of a plant, when severed from the body of it; or, the whole plant itself, when severed from the ground. Animals are distinguished into such as are tame, and such as are wild. In such as are of a nature tame and domestic, as horses, kine, sheep, poultry, and the like, a man may have as absolute a property, as in any inanimate things; because they continue perpetually in his occupation, and will not stay from his house, or person, unless by accident, or fraudulent enticement; in either of which cases, the owner does not lose his property. Of all tame and domestic animals, the brood belongs to the owner of the dam, or mother. Other animals are, either not the objects of property at all, or else fall under the other division, namely, that of qualified, limited, or special property; and this kind of property in all creatures, that are wild, may be acquired either by industry, or by reason of their impotence. A qualified property may subsist in animals, that are wild, by a man's reclaiming and making them tame by art, industry, and education; or, by so confining them within his own immediate power, that they cannot escape, and use their natural liberty; such as deer in a park, hares, or rabbits, in an enclosed warren, doves in a dove house, pheasants or partridges in a mew, hawks, that are fed and commanded by their owner, and fish in a private pond, or in trunks. These are no longer the property of a man, than while they continue in his keeping and actual possession; for, if at any time, they regain their natural liberty, his property instantly ceases, unless they have an intention of returning; which is only to be known by their usual custom of returning. The law, therefore, intends this possession farther than the mere manual occupation; for my pigeons, that are flying at a distance from home, remain still in my possession; and I still preserve my qualified property in them: and, likewise, the deer, that is chased out of my park, and is instantly pursued by the keeper. But, if they stray without my knowledge, and do not return in the usual manner, it is then lawful for any stranger to take them. But if a deer, or any wild animal reclaimed, hath a col-

lar, or other mark, put upon him, and goes and returns at his pleasure, the owner's property in him still continues, and it is not lawful for any one else to take him; but, otherwise, if the deer has been long absent, without returning. Bees, also, are of a wild nature; but when hived and reclaimed, a man may have a qualified property in them; but though a swarm lights upon my tree, I have no more property in them, 'till I have hived them, than I have in the birds which make their nests thereon; and, therefore, if another hives them he shall be their proprietor; but a swarm which fly from, and out of my hive, are mine so long as I can keep them in sight, and have power to pursue them; and, in these circumstances, no one else is entitled to take them. While this qualified, or defensible property continues, the subjects of it are as much under the protection of the law, as if they were absolutely, and indefeasibly mine; and an action will lie against any man, that detains them from me, or unlawfully destroys them. It is also as much felony to steal such of them, as are fit for food, as it is to steal tame animals; but not so if they are only kept for pleasure, curiosity, or whim; as dogs, bears, cats, apes, parrots and singing birds, because their value is not intrinsic, but depending only on the caprice of the owner; though is such an invasion of property, as may amount to civil injury, and be redressed by a civil action. A qualified property may also subsist with relation to wild animals, by reason of their impotence; as when conies, or other creatures make their nests, or burrows, in my land, and have young ones there: I have a qualified property in those young ones, 'till such time as they can fly, or run away, and then my property expires; but 'till then, it is, in some cases, trespass, and in others, felony, for a stranger to take them away; for, here, as the owner of the land has it in his power to do what he pleases with them, the law therefore vests a property in him of the young ones, in the same manner as it does of the old ones, if reclaimed and confined; for these cannot, through weakness, any more than the others, through restraint, use their natural liberty, and forsake him. Many other things may also be the objects of qualified property. It may subsist in the very elements of light, of air, and of water. A man can have no absolute, permanent property in these, as he may in the earth and land; since these are of a vague and fugitive nature, and therefore can admit only of a precarious and qualified ownership, which lasts only so long, as they are in actual use and occupation, but no longer. If a man disturbs another, and deprives him of the lawful enjoyment of these; if one corrupts the air of another's house, or garden, fouls his water, or uppins and lets it out, or if he diverts an ancient water course, that used to run to the other's mill, or meadow, the law will animadvert hereon as an injury, and protect the party injured in his possession. But the property in them

ceases the instant they are out of possession; for, where no man is engaged in their actual occupation, they become again common, and every man has an equal right to appropriate them to his own use. Property may also be of a qualified nature, on account of the peculiar circumstances of the owner, when the thing itself is very capable of absolute ownership, as in cases of bailment.—(a.)

### PLEDGE.

ESTATES held in gage or pledge, are of two kinds: living pledge, or dead pledge, or mortgage. A living pledge is where a man borrows a sum of money, and grants an estate, as of twenty dollars a year, to hold 'till the rents and profits shall repay the sum borrowed. This is an estate conditioned to be void, as soon as such sum is raised; and, in this case, the land, or pledge, is said to be living; it subsists and survives the debt; and, immediately on the discharge of that, results back to the borrower. But a dead pledge, or mortgage, is where a man borrows of another a specific sum, and grants him an estate in fee, on condition that, if he the mortgagor shall repay the mortgaged the said sum, on a certain day, mentioned in the deed, then the mortgagor may re-enter on the estate so granted in pledge; or, as is the more usual way, that then the mortgagee shall re-convey the estate to the mortgagor. In this case, the land, which is so put in pledge, is by law, in case of non-payment at the time limited, forever dead and gone from the mortgagor; and the mortgagee's estate in the land is no longer conditional, but absolute. But, so long as it continues conditional, that is, between the time of lending the money, and the time allotted for payment, the mortgagee is called tenant in mortgage. As soon as the estate is created, the mortgagee may immediately enter on the lands, but is liable to be dispossessed, upon performance of the condition, by payment of the mortgage money at the day limited; and therefore, the usual way is, to agree that the mortgagor shall hold the land 'till the day assigned for payment, when, in case of failure, whereby the estate becomes absolute, the mortgagee may enter upon it, and take possession, without any possibility, at law, of being afterwards evicted by the mortgagor, to whom the land is now forever dead. But

(a)—2 Bl. Com. p. 382, &c. For property in action, see contract. Permitting personal property to go into the possession of a daughter, on her marriage, and to remain there a considerable length of time, is regarded as sufficient evidence of a gift:—Teague vs. Griffy; 2 Nott McCord, p. 93.

here the courts of equity interpose, and though a mortgage be thus forfeited, and the estate absolutely vested in the mortgagor, at the common law, yet they will consider the real value of the tenements compared with the sum borrowed: And if the estate be of greater value, than the sum lent thereon, they will allow the mortgagor, at any reasonable time, to recall, or redeem his estate, paying to the mortgagee his principal, interest, and expenses; for otherwise, in strictness of law, an estate worth one thousand pounds might be forfeited for non-payment of one hundred pounds, or a less sum. This reasonable advantage allowed to mortgagors, is called the equity of redemption, and this enables the mortgagor to call on the mortgagee, who has possession of his estate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and interest, thereby turning the doed, into a kind of living pledge. But, on the other hand, the mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately, or else call upon the mortgagor, to redeem his estate presently, or in default thereof, to be forever foreclosed from redeeming the same; this is to lose his equity of redemption without a possibility of recall.—(a.)

## POLICY OF INSURANCE.

A policy of insurance is a contract between A. and B. that upon A's paying premium equivalent to the hazard run, B will indemnify, or insure him against a particular event. This is founded upon one of the same principles, as the doctrine of interest upon loans, that of hazard, but not that of inconvenience. For if I insure a ship to the Levant, and back again, at five per cent. here I calculated the chance, that she performs her voyage, to be twenty to one against her being lost; and if she be lost, I loose one hundred pounds, and get five pounds. Now this is much the same as if I lend a merchant, whose whole fortunes are embarked in this vessel, one hundred pounds at the rate of eight per cent. for, by a loan I should be immediately out of possession of my money, the inconvenience of which, we suppose, equal to three per cent. If therefore, I had actually lent him one hundred pounds, I must have added three pounds, on the score of inconvenience, to the five pounds, allowance for the hazard; which, together, would have made eight pounds. But

(a)—2 Bl. Com. p. 157, &c.—See A. A. 1791, which alters the law on this subject. Title Mortgages.

as upon an insurance, I am never out of possession of my money, 'till the loss actually happens, nothing is therein allowed upon the principle of inconvenience, but all upon the principle of hazard. Thus too, in a loan, if the chance of re-payment depends upon the borrower's life, it is frequent, besides the usual rate of interest, for the borrower to have his life insured, 'till the time of re-payment; for which he is loaded with an additional premium suited to his age and constitution. Thus, if Simpronius has an annuity for his life, and would borrow one hundred pounds of Titius for a year, the inconvenience and general hazard of this loan, are equivalent to five pounds, which is therefore the legal interest; but there is also a special hazard in this case; for, if Simpronius dies, within the year, Titius must lose the whole of his hundred pounds. Suppose this chance to be as one to ten, it will follow that the extraordinary hazard is worth ten pounds more; and therefore, that the reasonable rate of interest in this case, would be fifteen per cent. But this, the law, to avoid abuses, will not permit to be taken. Simpronius, therefore, gives Titius, the lender, only five pounds, the legal interest, but applies to Gaines, an insurer, and gives him the other ten pounds, to indemnify Titius against the extraordinary hazard. And, in this way, may any extraordinary, or particular hazard be provided against, which the established rate of interest will not reach; that being calculated by the state, to answer the ordinary and general hazard, together with the lender's inconvenience, in parting with his specie for the time. The very essence of these contracts, consisting in the observance of the purest good faith and integrity, they are vacated by any, the least shadow of fraud, or undue concealment: And, on the other hand, being much for the benefit and extension of trade, by distributing the loss, or gain, among a number of adventurers, they are greatly encouraged and protected by the law.—(a.)

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### PRINCIPAL.

A man may be principal in an offence, in two degrees: a principal in the first degree is he, that is the actor, or absolute perpetrator of the crime; and, in the second degree, he is, who is present, aiding and abetting the fact to be done; which presence need not always be an actual, immediate, standing by, without sight, or hearing of the fact; but there may be, also, a construc-

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(a)—2 Bl. Com. p. 453, &c.

## PREGNANCY.

tive presence, as when one commits a robbery, or murder, and another keeps watch, or guard, at some convenient distance: and this rule hath also other exceptions: for, in case of murder by poisoning, a man may be a principal felon, by preparing and laying the poison, or persuading another to drink it, who is ignorant of its poisonous quality, or giving it to him for that purpose, and yet not administer it himself, nor be present when the very deed of poisoning is committed. And the same reasoning will hold with regard to other murders committed in the absence of the murderer, by means which he had prepared before hand, and which, probably, could not fail of their mischievous effect; as, by laying a trap, or pitfall for another, whereby he is killed, letting out a wild beast, with an intent to do mischief; or, exciting a madman to commit murder, so that death ensues thereupon: in every of these cases, the party offending is guilty of murder as a principal in the first degree; for he cannot be called an accessory, that necessarily presupposing a principal; and the poison, the pitfall, the beast, or the murderer, cannot be held principals, being only the instruments of death. As, therefore, he must be actually guilty, either as principal, or accessory, and cannot be so as accessory, it follows, that he must be guilty as principal; and if as principal, then in the first degree; for there is no other criminal, much less a superior in the guilt, whom he could aid, abet, or assist.—(n.)

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## PREGNANCY.

WHERE a woman is capitally convicted, and pleads her pregnancy, though this is no cause to stay the judgment, yet it is to respite the execution, till she be delivered. This is a mercy by the law of nature, in favor of the offspring. In case this plea be made in stay of execution, the judge must direct a jury of twelve matrons, or discreet women, to inquire into the fact; and if they bring in their verdict quick with child, (for barely with child, unless it be alive in the womb, is not sufficient,) execution must be staid, generally till the next session; and so from session to session, till she is either delivered, or proved by the course of nature, not to have been with child at all; but if she once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, she shall not be entitled to the benefit of a farther respite for that cause; for she-

(n)—*4 Bl. Com. p. 345.*

may now be executed before the child is quick in the womb, and shall not, by her own incontinence, evade the sentence of justice.—(a.)

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### PRISON-BREACH.

BREACH of prison by the offender himself, when committed for an offence not capital, is punishable as a high misdemeanor by fine and imprisonment.—(b.)

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### PROMISE.

A PROMISE is in the nature of a verbal covenant, and wants nothing but the solemnity of writing and sealing, to make it absolutely the same. If therefore it be, to do any explicit act, it is an express contract, as much as any covenant; and the breach of it is an equal injury. And for this, there lies an action on the case, for what is called the assump<sup>s</sup>it, or undertaking of the defendant; the failure of performing which is the wrong, or injury done to the plaintiff; the damage whereof the jury are to estimate and settle. As if a builder promises, undertakes, or assumes to Caius, that he will build and cover his house within a time limited, and fails to do it, Caius has an action on the case against the builder, for this breach of his express promise, undertaking, or assump<sup>s</sup>it; and shall recover a pecuniary satisfaction for the injury sustained by such delay.—(c.)

Promise is, when upon a valuable consideration, persons bind themselves by words to do, or perform such a thing as is agreed on; and a promise against a promise made at one and the same time, is a sufficient ground for an action. If promises are executory on both sides, performance need not be averred; because it is the counterpromise, and not the performance, that varies the consideration. Where a promise is made to do a thing, and there is no breach of it, the same may be discharged by parol; but if it be once broken, it cannot be discharged without release in writing, being then a debt. If a promise be to pay a sum of money, by several monthly payments, the promise being in time, a breach of payment of the first month, is a breach of the whole promise.—(d.)

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(a)—4 Bl. Com. p. 394. (b)—4 Ibid. p. 130. (c)—3 Ibid. p. 158. (d)—Jacob's Law Dictionary.

## RAPE

Is the carnal knowledge of a woman forcibly, and against her will. A male infant, under the age of fourteen years, is presumed by law incapable to commit a rape, and therefore, it seems, cannot be found guilty of it. For though in other felonies, malice supplies the place of age, yet as to this particular species of felony, the law supposes an imbecility of body as well as mind. The law holds it to be felony to force even a concubine, or harlot.

The party ravished may give evidence upon oath, and is, in law, a competent witness; but the credibility of her testimony must be left to the jury upon the circumstances of fact that concur in that testimony. For instance, if the witness be of good fame; if she presently discovered the offence, and made search for the offender; if the party accused fled for it, these, and the like, are concurring circumstances, which give great probability to her evidence. But if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place where the fact alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these and the like circumstances, carry a strong, but not conclusive presumption, that her testimony is false, or feigned.—(e.)

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## RECAPTION, OR REPRISAL,

HAPPENS, when one has deprived another of his property in goods, or chattels personal, or wrongfully detains one's wife, child, or servant; in which case, the owner of the goods, and the husband, parent, or master, may lawfully claim, and retake them, whenever he happens to find them, so it be not in a riotous manner, nor attended with a breach of the peace. And if he can so contrive it, as to gain possession of his property again, without force, or terror, the law favors, and will justify his proceeding. But, as the public peace is a superior consideration to any one man's private property, this natural right of recaption shall never be exerted, where such exertion must occasion strife and bodily contention, or endanger the peace of society. If, for instance, my horse is taken away, and I find him in a common, or a public inn, I may lawfully seize him to

my own use; but I cannot justify breaking open a private stable, or entering on the ground of a third person, to take him, except he be feloniously stolen; but must have recourse to an action at law.—(g.)

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### RIOT.

A RIOT is where three, or more, actually do an unlawful act of violence, either with, or without, a common cause of quarrel; as if they beat a man, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner. The punishment is by fine and imprisonment; to which the pillory, in very enormous cases, has been superadded.—(h.)

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### ROBBERY.

OPEN and violent larceny from the person, or robbery, is the felonious and forcible taking from the person of another, of goods, or money, to any value, by violence, or putting him in fear. There must be a taking, otherwise it is no robbery. A mere attempt to rob is not felony, but only a misdemeanor, and punishable with fine and imprisonment. But if a thief having once taken a purse, returns it, still it is a robbery: and so it is, whether the taking be strictly from the person of another, or in his presence only: as when a robber, by menaces and violence, puts a man in fear, and drives away his sheep, or his cattle, before his face. It is immaterial of what value the thing taken is; a penny as well as a pound, thus forcibly extorted, makes a robbery. The taking must be by force, or a previous putting in fear; and this is the criterion which distinguishes robbery from other larcenies. But this putting in fear does not imply any great degree of terror or affright, in the party robbed; it is enough if so much force, or threatening by word or gesture be used, as might create an apprehension of danger, or induce a man to part with his property without, or against, his consent. And if a man be knocked down without any previous warning, and stripped of his property, while senseless, though strictly,

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(g)—3 Bl. Com. p. 4. (h)—4 Ibid. p. 46.

he cannot be said to be put in fear, yet this is undoubtedly a robbery. So, if a person, with a sword drawn, begs an alms, and I give it to him through mistrust, and apprehension of violence, this is a felonious robbery. So, if under a pretence of sale, a man forcibly extorts money from another, neither shall this subterfuge avail him.—(i.)

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## SALE OR EXCHANGE

Is a transmutation of property from one man to another, in consideration of some price, or recompence in value; for there is no sale without a recompence; there must be quid pro quo, (something for something). If it be a commutation of goods for goods, it is more properly an exchange; but if it be transferring of goods for money, it is called a sale. But with regard to the law of sales and exchanges, there is no difference. If a man agrees with another for goods at a certain price, he may not carry them away before he hath paid for them; for it is no sale without payment, unless the contrary be expressly agreed; and therefore, if the vendor says, the price of a beast is four pounds, and the vendee says he will give four pounds, the bargain is struck, and neither of them is at liberty to be off, provided immediate possession be tendered by the other side. But if neither the money be tendered, nor the goods delivered, nor tender made, nor any subsequent agreement be entered into, it is no contract, and the owner of the goods may dispose of them as he pleases. But if any part of the price is paid down, if it be but a penny, and any portion of the goods be delivered, by way of earnest, the property of the goods is absolutely bound by it, and the vendee may recover the goods by action, as well as the vendor may the price of them. As soon as the bargain is struck, the property of the goods is transferred to the vendee, and that of the price to the vendor; but the vendee cannot take the goods, until he tenders the price agreed on. But if he tenders the money to the vendor, and he refuses it, the vendee may seize the goods, or have an action against the vendor for detaining them; and by a regular sale, without delivery, the property is so absolutely vested in the vendee, that if A sells a horse to B for ten pounds, and B pays him earnest, or signs a note in writing of the bargain, and afterwards, before the delivery of the horse, or money paid, the horse dies, in the vendor's custody, still he is entitled to the money; because, by the contract, the property was in the vendee.—(k.)

(i)—4 Bl. Com. 241, &c. (k)—2 Ibid. p. 446, &c. See contract.

A sound price always raises an implied warranty, that the thing sold is free from defects known and unknown.—(l.)

The doctrine of implied warranty applies as well to sales by administrators and executors, as others.—(m.)

### SHERIFF.

As a principal conservator of the peace, the sheriff may apprehend and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the peace. He may, and is bound, ex-officio, to pursue and take all traitors, murderers, felons and other misdoers, and commit them to gaol for safe custody. And for the purpose of keeping the peace, and pursuing felons, he may command all the people of his country to attend him, which is called the posse comitatus, or power of the country: and this summons, every person above fifteen years old, is bound to attend upon warning, under pain of fine and imprisonment. In his ministerial capacity, the sheriff is bound to execute all process issuing from the courts of justice. In the commencement of civil causes, he is to serve the writ, to arrest, and take bail: when the cause comes to trial, he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, he returns the jury, he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself. He must also levy all fines and forfeitures; and to enable him to execute these various duties he has under him, many inferior officers, as under sheriffs, and gaolers. The under sheriff usually performs all the duties of the office; a very few only excepted, where the personal presence of the high sheriff is necessary.—(n.)

The judicial authority of the sheriff, as conservator of the peace, is seldom used, being commonly executed by the justices of the peace. In some particular cases, the high sheriff is to execute his office in person, as on a writ of partition, waste, &c. where the sheriff is commanded to go himself in his own person.—(o.)

### SECURITY FOR THE PEACE.

THIS consists in being bound with one or more sureties, in a recognizance or obligation to the state, entered on record, and

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(l)—*Lester vs. Ex'rs. of Graham*, 1 Mill. p. 182. 2 do. p. 353. (m)—*Eastland vs. Longshom*, and alt. 1 Nott & McCord, p. 194. (n)—1 Bl. Com. p. 343, &c. See also P. L. p. 271. (o)—*Jacob's Law Dictionary*.

taken in some court, or by some judicial officer, whereby the parties acknowledge the uselss to be indebted to the state in the sum required, (for instance, 100*l.*) with condition to be void and of none effect, if the party shall appear in court on such a day ; and in the mean time shall keep the peace, either generally, towards all the people of the state, or particularly also, with regard to the person who craves the security. And if the condition of such recognizance be broken by any breach of the peace, the recognizance becomes forfeited or absolute, and being estreated, or extracted, (taken out from amongst other records,) and the party and his sureties, having now become the absolute debtors of the state, they are sued for the several sums in which they are respectively bound. Any justices of the peace, by virtue of their commission, and those who are ex-officio conservators of the peace, may demand such security, according to their own discretion; or it may be granted at the request of any citizen, upon due cause shown. Wives may demand it against their husbands; or husbands, if necessary, against their wives. But female coverts, and infants, ought to find security by their friends only, and not to be bound themselves, for they are incapable of engaging themselves to answer any debt, which is the nature of these recognizances, or acknowledgments. A recognizance may be discharged by the death of the principal party bound thereby, if not before forfeited; or by order of the court to which such recognizance is certified, if they see sufficient cause; or in case he, at whose request it was granted, if granted upon a private account, will release it; or does not make his appearance to pray that it may be continued. A justice of the peace may, ex officio, bind all those to keep the peace, who, in his presence, make any affray, or threaten to kill or beat another; or contend together with hot and angry words; or go about with unusual weapons, or attendants, to the terror of the people; and all such as he knows to be common barrators, and such as are brought before him by the constable for a breach of the peace, in his presence; and all such persons as having been before bound to the peace, have broken it, and forfeited their recognizances. Also, wherever any private man hath just cause to fear that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him, or that he will procure others to do so, he may demand security of the peace against such person; and every justice of the peace is bound to grant, if he who demands it, will make oath, that he is actually under fear of death, or bodily harm; and will shew that he has just cause to be so, by reason of the other's menaces, attempts, or having lain in wait for him; and will also further swear, that he does not require such security out of malice, or for mere vexation. This is called swearing the peace against another, and if the party does not find such sureties, as the jus-

tice, in his discretion, shall require, he may be immediately committed, till he does. Such recognizance for keeping the peace may be forfeited by any actual violence, or even an assault, or menace, to the person of him who demanded it, if it be a special recognizance; or, if the recognizance be general, by any unlawful action whatsoever, that either is, or tends to, a breach of the peace; or by any private violence committed against any of the people of the state. But a bare trespass upon the goods, or lands, of another, which is a ground for a civil action, is no forfeiture of the recognizance. Neither are mere reproachful words, as calling a man knave or liar, any breach of the peace, so as to forfeit one's recognizance, being looked upon to be merely the effect of unmeaning heat and passion, unless they amount to a challenge to fight.—(a.)

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## SLANDER.

If a man, maliciously, and falsely, utter any slander, or false tale of another, which may either endanger him in law, by impeaching him of some heinous crime; as to say that a man hath poisoned another, or is perjured; or which may exclude him from society, as to charge him with having an infectious disease; or which may impair, or hurt his trade, or livelihood, as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave; in all these cases an action may be had, without proving any particular damage to have happened. Mere scurrility, or opprobrious words, which neither in themselves import, nor are in fact attended with, any injurious effects, will not support an action. Words of heat and passion, as to call a man rogue and rascal, if productive of no ill consequence, and not of any of the dangerous species before mentioned, are not actionable. Nor are words spoken in a friendly manner, as by way of advice, admonition, or concern, without any tincture, or circumstance of ill will; for in both these cases, they are maliciously spoken, which is part of the definition of slander; neither are any reflecting words made use of in legal proceedings, and pertinent to the cause in hand, a sufficient cause of action for slander: And if the defendant be able to justify, and prove the words to be true, no action will lie, even though special damage hath ensued; for then it is no slander, or false tale; as if I can prove the tradesman a bankrupt, the physician a quack, or the lawyer a knave, this will destroy their respective actions; for

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(a)—4 Bl. Com. p. 252, &c.

**TENDER.**

though there may be damage sufficient accruing from it, it is *damnum absque injuria*, (a damage without any act of injustice) and where there is no injury, the law gives no remedy.—(a.)

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**SLAVERY.**

VILLEINS in gross, or at large, were annexed to the person of the lord, and transferable by deed, from one man to another. They could not leave their lord without his permission; and if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts, or other chattels. A villein could acquire no property, either in lands, or goods; but, if he purchased either, the lord might enter upon them, oust the villein, and seize them to his own use, unless he contrived to dispose of them again, before the lord had seized them; for the lord had then lost his opportunity.—(b.)

The law does not authorize the killing of a runaway negro, except in cases where the person attempting to take one is endangered by actual resistance, as by assaulting or striking.—(c.)

In the latter case it is said, that in all cases not specially provided for by the legislature, whether slaves be considered as persons, or chattels, the common law applies to them.

The owner cannot maintain an action upon a note given to his slave; but where a slave buys, by virtue of a written ticket, from his master, the contract would be considered as made with the master, through the medium of his slave.—(d.)

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**TENDER.**

AFTER tender and refusal of a debt, if the creditor harasses his debtor with an action, it then becomes necessary for the defendant to acknowledge the debt, and plead the tender; adding that he has always been ready, and still is ready, to discharge it; for a tender by the debtor, and refusal by the creditor, will, in all cases, discharge the costs, but not the debt itself, though in some particular cases, the creditor will totally lose his money.—(e.)

(a)—3 Bl. Com. p. 123, &c. (b)—2 Ibid. pp. 93—4. (c)—Arthur vs. Wells: 2 Mill, p. 314.—Witsell vs. Ernest & Parker: 1 Noit & McCord, p. 132. (d)—Gregg vs. Thompson: 2 Mill, p. 331. (e)—3 Bl. Com. p. 303, &c.

A tender may be of money in bags, without shewing, or telling it, if it can be proved there was the sum tendered; it being the duty of him, that is to receive the money, to put out and tell it; though where a person held the money on his arm, in a bag, this was adjudged a good tender. If a tender is made of more than is due, it is good; and the party, to whom tendered, ought to take out what belongs to him. Tender on rent, or any part of the land, or at any time of the last day of payment, will save the condition for that time, though the landlord refuse it. But when rent is tendered, the landlord may after bring debt, though he cannot recover any damages: the lessor's being ready to pay, excuses the damages, but doth not debar the other of his rent. A tender of rent must be of the whole rent due, without any deduction of taxes, or other payments, unless it be so agreed, stoppage being no payment. Tender of money on a bond is to be made to the person of the obligee; though, if the obligor be sued afterwards, he must still pay it. But, if the obligor be to do any collateral thing, or which is not part of the obligation, as to deliver a house, &c. and the obligor offer to do his part, and the obligee refuseth it, the condition is performed, and the obligation discharged forever. A sum awarded by an award, was lost by the tender, it being a collateral thing.—(a.)

A tender must be unconditional, and of a definite and certain character; and must invariably be for the amount due. A physician's bill, or the like, offered as a set off will make no part of a tender.—(b.)

## TIME.

THE space of a year is a determinate, and well known period, consisting, commonly, of three hundred and sixty-five days. That of a month is more ambiguous, there being, in common use, two ways of calculating months, either as lunar, consisting of twenty-eight days, the supposed revolution of the moon, thirteen of which make a year, or as calendar months of unequal lengths, according to the Julian division, in our common almanacs, commencing at the calends of each month, whereof, in a year there are only twelve. A month, in law, is a lunar month, or twenty-eight days, unless otherwise expressed; not only because it is always one uniform period, but because it falls natu-

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(a)—Jacob's Law Dictionary. (b)—Eastland *vs.* Langhorn, & al. 1 Nott & McCord, p. 194. Nothing but gold and silver is a legal tender under the Constitution of the United States: 2 do. p. 519.

rally into a quarterly division by weeks. Therefore, a lease for twelve months, is only for forty-eight weeks; but if it be for a twelve month, in the singular number, it is good for the whole year; for herein the law recedes from its usual calculation, because the ambiguity between the two methods of computation ceases; it being generally understood, that, by the space of time called thus, in the singular number, a twelve month, is meant the whole year, consisting of one solar revolution. In the space of a day, all the twenty-four hours are usually reckoned; the law generally rejecting all fractions of a day, in order to avoid disputes. Therefore, if I am bound to pay money on any certain day, I discharge the obligation, if I pay it at any time before twelve o'clock at night, after which, the following day commences. (a) To ascertain any circumstances relative to a particular day past, it hath been tried by an inspection of the almanac. (b) The general rule, that the law will not allow fractions of a day, applies rather to legal proceeding, or to legal diligence, than to questions of right, unconnected with them; therefore, when there are two judgments, or executions of the same day, neither shall have a preference; but, of vested rights, acquired by operation of law, or by contract, it is otherwise; and to ascertain the preference a mortgage may have to a judgment, the precise time, at which the deeds were executed, and judgment obtained, may be referred to.—(c.)

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### TORTS.

ACTIONS founded on torts, or wrongs, are such, whereby a man claims a satisfaction in damages, for some injury done to his person, or property; and of this nature are all actions for trespasses, nuisances, assaults, defamatory words, and the like.—(d.)

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### TRESPASS.

THIS, in its largest and most extensive sense, signifies any transgression, or offence, against the law of nature, of society,

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(a)—2 Bl. Com. p. 140. (b)—3 Ibid. p. 333. (c)—Ex parte Stagg: 1 Nott & McCord, p. 406. (d)—3 Bl. Com. p. 117.

or of the country, in which we live; whether it relates to a man's person, or property. Therefore, beating another is a trespass-taking, or detaining, a man's goods, are, respectively, trespasses: the non-performance of promises, or undertakings, is also a trespass; and, in general, any misfeasance, or act of one man, whereby another is injuriously treated, or damaged, is a transgression, or trespass, in its largest sense. But, in a limited and confined sense, when considered only in relation to lands, tenements, or hereditaments, it signifies no more than an entry on another man's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property. For the right of meum and tuum, or property, in lands, being once established, it follows as a necessary consequence, that this right must be exclusive; that is, that the owner may retain to himself the sole use and occupation of his soil: every entry, therefore, thereon, without the owner's leave, and especially if contrary to his express order, is a trespass, or transgression. And every man's land is, in the eye of the law, set apart, and inclosed from his neighbor's; and that, either by a visible and material fence, as one field is divided from another, or by an ideal invisible boundary existing only in the contemplation of law; as when one man's lands adjoin to another, in the same field: And every such entry, or breach, of a man's close, carries, necessarily, along with it, some damage, or other; for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz: the treading down and bruising of his herbage. One must have a property, either absolute, or temporary, in the soil, and actual possession by entry, to be able to maintain an action of trespass; or, at least, it is requisite that the party have a lease, and possession of the vesture and herbage of the land. In some cases, trespass is justifiable; or rather, entry on another's land, or house, shall not, in those cases, be accounted trespass: as, if a man comes hither to demand, or pay money, there payable; or to execute, in a legal manner, the process of the law; also, a man may justify entering into an inn, or public house, without the leave of the owner, first specially asked; because when a man professes the keeping of such inn, or public house, he thereby gives a general license to every person to enter his doors. So a landlord may justify entering to distrain for rent, or a reversioner to see if any waste be committed on the estate, for the apparent necessity of the thing. In like manner the law warrants the hunting of ravenous beasts of prey, as badgers and foxes, in another man's land; because, the destroying of such creatures is said to be profitable to the public. But, in cases where a man misde-means himself, or makes an ill use of the authority, with which the law entrusts him, he shall be accounted a trespasser from the beginning; as if one comes into a tavern, and will not go out

in a reasonable time, but ~~tirries~~ there all night, contrary to the inclination of the owner, this wrongful act shall affect, and have relation back to his first entry, and make the whole a trespass. But a bare non-cessance, as not paying for the wine he calls for, will not make him a trespasser; for this is only a breach of contract, for which the taverner may have an action against him. So if a landlord distrain for rent, and wilfully killed the distress, this made him a trespasser ab initio; and so would any other irregularity do. If a reversioner, who enters, on pretence of seeing waste, breaks the house, or stays there all night; in this case, the law judges that he entered for this unlawful purpose; and therefore, as the act, which demonstrates such, his purpose, is a trespass, he shall be esteemed a trespasser ab initio. So also, in the case of hunting the fox, or badger, a man cannot justify breaking the soil, and digging him out of his earth; for though the law warrants the hunting of such noxious animals, for the public good, yet it is held, that such things must be done in an ordinary and usual manner.—(a.)

It is no trespass to hunt on the uninclosed lands of another, notwithstanding the disapprobation, or dissent, of the owner.—(b.)

### TRIAL.

**T**HIS plea of autrefoits acquit, or a former acquittal, is grounded on this universal maxim of the common law, that *no man* is to be brought into jeopardy of his life, *more than once* for the same offence. And hence, it is allowed, as a consequence, that where a man is once fairly found not guilty, upon any indictment, or other prosecution, before any court having competent jurisdiction of the offence, he *may plead such acquittal* in bar of any subsequent accusation for the same crime.—(c.)

### WASTE,

**I**s a spoil, or destruction, in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him, that hath the

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(a)—3 Bl. Com. p. 208, &c., (b)—M'Comico vs. Singleton 2 Mill, p. 24.  
(c)—4 Bl. Com. p. 335.

remainder, or reversion, in fee simple, or fee-tail. It is either voluntary, as by pulling down a house, or permissive, as to suffer it to fall for want of necessary reparations. Whatever does a lasting damage to the freehold, or inheritance, is waste; therefore, removing wainscot, floors, or other things, once fixed to the freehold of a house, is waste. So also, if the house be burnt by the carelessness, or negligence of the lessee, it is waste. Timber also, is part of the inheritance. Trees, that are generally used for building, are, for that reason, considered as timber; and to cut down such trees, or top them or to do any other act, whereby the timber may decay, is waste. But underwood the tenant may cut down at any reasonable time that he pleases; and may also take as much timber as may be necessary for the use and enjoyment of the farm, unless restrained by particular contracts, or exceptions.—(a.)

## WILLS.

A testament of chattels, written in the testator's own hand, though it has neither his name nor seal to it, nor witnesses present at its publication, is good; provided sufficient proof can be had, that it is his hand writing. And though written in another's hand, and never signed by the testator; yet, if proved to be according to his instructions, and approved by him, it hath been held a good testament of the personal estate. No testament is of any effect, 'till after the death of the testator; and, therefore, if there be many testaments, the last overthrows all the former; but the republication of a former will revokes one of a later date, and establishes the first again. Testaments may be avoided three ways: first, if made by a person laboring under any legal incapacity; as for want of discretion, or of sufficient liberty, and free will. In the former class are reckoned infants, under the age of fourteen years, if males, and twelve if females; madmen, or otherwise non compotes, idiots, or natural fools, persons grown childish by reason of old age, or distempers; such as have their senses besotted with drunkenness: all these are incapable, by reason of mental disability, to make any will, so long as that disability lasts. To this class, also, may be referred such persons as are born deaf, blind, and dumb. Second, such persons, as are intestable for want of liberty, or freedom of will, are those, who are placed in such particular circumstances of duress, that they cannot be supposed to be at

lest effect in stimulating the care and diligence, as well as guarding the propriety and rectitude of these tribunals.

It is, in most cases proper, that there should be more members nominated, than the lowest number required by law, to guard against the accident of members falling sick, or dying, or being disqualified; and therefore, it would be well to appoint one, or two, members more, who might be sworn with the other members, and hear all the evidence adduced, and every other circumstance relating to the trial; so that, in case any member of the court should die, or, of necessity, be absent, either on account of an obligation, or other disqualification, the court might proceed with the matter before them, in the same manner, as if no accident had happened; but, it is understood that no member, over and above the number appointed by law, is to give any vote, or opinion, in passing the sentence; and the supernumerary members must always be of the inferior degree of rank, among those appointed to compose the court.

It is not competent for a court-martial to continue its proceedings, unless all the members appointed to form the court be present; and, in case any members should be disqualified by an objection, or otherwise, or any circumstance should prevent the further attendance of a member, the seat so vacated must be supplied by proper authority, before the court can proceed with the matter before them; and, in such case, the whole of the evidence, touching the matter in hearing, must be read over to the new member; and he may cross examine and question the witnesses who have given their testimony, so as to elucidate such parts thereof, as he may not perfectly comprehend.

In all cases, where a court-martial shall be composed of an even number of members, who, in giving their opinions, may be equally divided, the point ought to be considered as decided in favor of the prisoner. And the members composing a court-martial shall always take rank according to the seniority of their commissions.

A court-martial once constituted by proper authority, remains in existence until it is dissolved by the same authority which created it. The members, therefore, though the whole business is exhausted by their pronouncing sentence on the trials before them, are not at liberty to return to their ordinary duty, or leave the place, where the court is assembled, without special permission, 'till the court is finally dissolved. It may be necessary for the court to revive its sentence; or, they may be required to intimate the pleasure of the governor, or commander in chief, thereon, to the parties, in open court.

A court-martial must exhaust all the charges that come before them, either by separate opinions and judgments, upon each separate article, or where the several charges are connected, and form, altogether, one offence, by a sentence, referring to the

## COURTS MARTIAL.

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whole. It is not competent for the court, after taking cognizance of one, or more, of the articles of charge, and pronouncing sentence thereon, (even though that sentence should award the ultimum supplicium, death,) to waive the discussion of other articles of charge, that may remain; because, it is of importance to the public, that every-thing which has been made a matter of criminal accusation, should undergo a solemn decision, by the proper tribunal, that it may have effectual operation in guarding others from falling into similar practices. But the necessity of examining and discussing the whole of the articles of charge, which are brought before a court-martial, does not preclude their exercise of judgment on the irrelevancy of those charges, or on their competency to become the subject of trial. It frequently happens that when charges is exhibited by a private prosecutor, involving the consideration of various articles of alleged misconduct, or malversation, that the prosecutor, either from too great anxiety, or error in judgment, specifies certain matters as articles of charge, which a court may judge to be of a nature entirely blameless; and that, although proved, or acknowledged, by the prisoner, they infer no criminality. In such a case, it is the duty of the court to dismiss the charge altogether, and throw it out of their consideration as irrelevant. In like manner, where a charge appears, either from self-evident circumstances, or from facts emerging in the course of the trial, not to attach upon the party accused, it is the duty of the court, to waive all examination into the subject, as being foreign to the person of the prisoner, and to be declared so by their sentence.

The members of courts-martial, when belonging to different corps, take the same rank, which they held in the militia; officers of equal grade taking place according to the dates of their commissions; for instance, if two lieutenants are promoted on the same day, to the rank of captain, he who took rank as elder lieutenant, will, of course, take precedence as captain; but if it should so happen, that their lieutenant's commissions are of the same date, their ensign's commissions, or other previous service, must be taken, in like manner, into consideration; and then length of service must determine the place, which each officer is to hold in the court.

It had formerly been a doubt in the British service, whether an officer, or soldier, after being dismissed, or discharged from the service, could be brought to trial before a court-martial, for a crime committed while he was in service, as the operation of the military law appeared to be confined to those who are in actual service. The point came solemnly to be determined in the case of lord George Sackville, who, immediately on his return to England, after the battle of Minden, had been deprived, by the king of Great Britain, of all military command and

commission, but was not brought to trial, for his conduct in that engagement, until some months afterwards, in consequence of his own demand, of a court-martial. The question was referred to the opinion of the twelve judges, who, by their answer, unanimously declared that they saw no ground to doubt the legality of the jurisdiction of a court martial in these circumstances.

It has likewise been a matter of doubt, in the American army, whether an officer who is under a suspension from service, for a limited time, and who shall, in that interval, commit any crime, or offence, in breach of the rules and articles of war, be subject to military law, and amenable to a court-martial for his conduct; but this doubt may be easily solved on a minute's reflection. Suspension, though it has the effect of depriving an officer, for the time, of his rank and pay, and putting a stop to the ordinary discharge of his military duties, does not void his commission, annihilate the military character, or dissolve that connexion, which subsists between him, and the government, in whose service he may be. He retains his commission, and is, at all times, liable to a call to duty, which would take off the sentence. Suspension, being a punishment, is regulated in its effects, by the tenor of the sentence which inflicts it, and which, as it bears no more than the temporary deprivation of rank and pay, must be limited in its consequences, to those effects alone; leaving every other particular of the military character entire. The suspended officer remains, therefore, subject to the military law, and is punishable for every breach thereof, committed during his suspension.

It may be considered among the peculiar advantages of the mode of trial by courts-martial, that their decisions are the result, not of an unanimous concurrence of the opinions of all the members, but of a majority of them. Where unanimity is requisite, it is evident that, in all cases of difficulty, there must be a concession of the rights of private judgment, and an implicit acquaintance in the sentiments of some leading members of the jury; otherwise, they never could agree upon a verdict. But in the sentences of courts-martial, no such concession is necessary. All the members of the court have their unbiased judicial power; and even the influence of opinion is guarded against as far as possible, by the order, in which the opinions and votes of the members are taken; the youngest member of the court being requested to give his opinion first, and the rest following in progressive seniority, up to the president, who votes last.

It is likewise a material advantage of the trial by courts-martial, that the whole evidence is taken down in writing, in the presence of the members of the court, who may, at all times, resort to the written proceedings, which, at the close of the trial,

and before sentence, are always read over to them, and compared with, and corrected by, their own notes taken during the trial; so that every one of the members must be completely master of the whole body of the evidence.

## CHAP. II.

*Of Arrest and Trial.*

As the highest punishment that can be inflicted by a court-martial for any offence committed against the military law of the state in time of peace, is cashiering and disqualification, the presumption is, that the officer, whose character is impeached, will be solicitous to obtain a judicial investigation of his conduct; and he is, therefore, permitted to be in arrest, at large; the only effect of the arrest being a suspension of his military authority, without any deprivation of his personal liberty.

In all courts-martial for the trial of persons, other than defaulters from musters established by law, and where special fines are imposed by law, the judge advocate sustains the prosecution in the name of the state: and as all offences admit of certain degrees and modifications of guilt, it is essentially necessary to the ends of justice, that any person, who is to undergo trial for an offence, should be apprised of the extent and degree of guilt, with which he stands charged, and of the particular facts, of which the prosecutor means to bring evidence against him, in order that he may have a fair opportunity of invalidating the proof of those facts by contrary evidence. In whatever terms therefore, the accusation in the charges may be conceived, it is necessary, 1st, that the crime, or offence, be clearly specified and expressed; and the act, or acts, of guilt, pointedly charged against the prisoner: 2d, that the time and place, when and where the crime was committed, be set forth with all possible certainty and precision. There is one class of offences, in which a distinct specification of the criminal act, or acts, is more particularly necessary. It is enacted, (see within title, militia, sec. xlvi.) that if the conduct of any officer shall be represented to the governor or commander in chief, the major-general of the division, brigadier-general of the brigade, or the commanding officer of the detachment, to be so unmilitary, and unbecoming of an officer, as to deserve cashiering, it shall be lawful for the governor, or commander in chief, major-general of the division, brigadier-general of the brigade, or commanding officer of the detachment, as the case may be, to order a court of inquiry: and, if on such inquiry, it appear that there is foundation for the charge, to have a court-martial held, who shall make such order in the business, as they shall think consistent with military rule." And as this is a crime of great,

Latitude of interpretation, and admitting both of an infinite variety of the acts, from which such misbehavior may be inferred, and often of a difference of opinion, with regard to the degree of guilt that may be attached to such acts, it is evident that much injustice would be done to any prisoner, who should be arraigned before a court-martial upon a general charge of "conduct unmilitary, and unbecoming of an officer," without any specification of the facts, which were deemed to constitute such gross misbehaviour; and which, possibly, the prisoner, if apprised of them, might either totally disprove, or shew, that they admitted of such extenuation from circumstances, as might alleviate the offence, or altogether exculpate him from the charge. The charges must also clearly designate, and make out the person of the prisoner by his name, surname, rank, or station, and regiment, or corps to which he belongs, &c. As A. B. captain, lieutenant, ensign, corporal, or private, &c. in the regiment of &c.

The same minuteness and precision ought to be observed in specifying the time and place, when and where the facts charged were committed, when it is possible to be thus particular; for such specification may, in most cases, be essentially necessary to the prisoner's defence. One of the most complete and conclusive proofs of exculpation is an alibi, that is, when convincing evidence is produced to the court, that the prisoner was in a different place at the time when the crime is charged to have been committed. As to the circumstance of place, it is in all cases, possible for the prosecutor to be most pointed and specific, and therefore, such specification can never be dispensed with in the framing of the charge. But, with regard to time, there cannot always be the same certainty and precision. Witnesses, without any intention to violate the truth, may, from defect of memory, vary in their testimony as to hours, days, time of the day, name of the month, &c. and yet be most pointed and accurate, as to the acts committed. The prosecutor, therefore, wanting the same absolute certainty for his information, is allowed some latitude with respect to time; and provided the charge is, in other respects, sufficiently precise, he may charge the fact or facts, to have been committed on such a day of such a month, or on one, or other, of the days of that month, or of the month immediately following. But as this is an indulgence granted only from necessity; so in no case where it is possible for the prosecutor to mark the time with certainty and precision, ought he to be allowed such latitude; as it deprives the prisoner of all opportunity of proving an alibi.

A true copy of the charges, on which the prisoner is to be tried, must be furnished to him by the judge advocate, in such time before the meeting of the court, that he may have a full opportunity of preparing himself for his defence; that is, collect-

ing such evidence, either oral, or written, as may be necessary for his exculpation, or in rebutting the proofs of the charge, and for advising with his counsel on all points touching the conduct of the trial, objections to the members, competency of the witnesses, &c. And after the charges have been thus far furnished to the prisoner, it is not competent for the judge advocate, or the prosecutor, to make any alteration in them, either in substance or in form, when they come before the court. If a material alteration occurs, to be made before trial, the consent of the person, on whose order the trial is to proceed, must be obtained from the alteration; of which, likewise, the prisoner is entitled to have the most timely notice that can be given to him.

All trials before courts-martial, like those in the civil courts of judicature, are conducted publicly, and with open doors.—The president and the whole of the members of the court being assembled, on the day appointed for its meeting, and intimation having been previously given for all the necessary witnesses to attend, the prisoner is brought into court, and called to the bar by his name. The judge-advocate then reads, in an audible voice, the warrant, or order for holding the court. He then calls over the names of the members of the court, who are desired to take their places, according to their rank in the militia, and the dates of their commissions, arranging themselves in that order, alternately, on the right and left hand of the president. The judge advocate then demands of the prisoner whether he has any objection against a challenge to make of any of the members present, and if he have, he is required to state his cause of challenge: on which the president must order the court to be cleared; and the members will then deliberate on the import and validity of the same. In courts-martial, the right of a peremptory challenge is not allowed, as in the trial of crimes before a civil court; but the prisoner must assign his cause of challenge, of the relevancy or validity of which, the members themselves are the judges. The most valid causes of challenge are suspicion of prejudice, or malice, and infamous character. The suspicion of prejudice may reasonably be inferred against a member, from the circumstances of near relation to any person or party injured, by the crime of the prisoner, or having any interest in the cause, whereby he may be led to wish the condemnation of the prisoner. As such causes of prejudice are various in degree, it is in the breast of the members, as judges of their validity, to give them what weight they conceive they are entitled to; nor can any general rule of decision be prescribed. As, previous to the assembling of a general court-martial, it sometimes happens that a court of inquiry is appointed for the purpose of determining whether there appear sufficient grounds for bringing the person accused to trial;

and it is allowed to such courts of inquiry to call before them and examine all witnesses, both in support of, and defence against, the accusation, and report their opinion of the grounds of charge. It has been questioned whether the members of such court are thereby incapacitated from afterwards setting on a court-martial, for the trial of a prisoner, on whose cause they have already reported their opinion. A court of inquiry, bearing a near affinity to a grand jury, and the law being precise on that point, that no grand juror that has found a bill of indictment against a person, can be a member of the petty jury, on the trial of that prisoner, or even the trial of another, wherein the same matter is in question, it seems to be thence, with much reason, concluded, that it is sufficient ground for challenging the member of a court-martial, who had given his opinion of the cause in a previous court of inquiry: for, although the members of a court of inquiry do not actually pronounce a sentence upon the cause, but only report their opinion, whether there appear sufficient ground for bringing the accused person to trial; yet even that opinion is derogatory from absolute impartiality: a natural bias thence arising to support and justify it on the final trial. So jealous is the law of the perfect impartiality of jurors, that it is allowed to be a good cause of challenge, that the juror has been heard to give his opinion before hand, that the party is guilty, and a similar ground of challenge against the member of a court-martial, would, without doubt, be sustained; much more would it be a sufficient ground of challenge against the member of a court-martial, in a case of appeal, where the same person had been one of the judges of the inferior court. The causes of challenge, impossible to be overruled, are the charge of corruption, or bribery, verified by competent proof; and malice, or enmity, expressed by word or deed, against the prisoner. Infamous character is likewise a most relevant ground of challenge: but as this objection admits of no precise definition, or description, it would be necessary, whenever it is moved, that the fact or reasons, on which it is founded, should not only be specified, but proved. Thus a member may be reasonably challenged on the ground of infamous character, who has been tried and convicted of a crime: but the proof of the fact must be produced in court, that is, the record of his conviction. The privilege of challenge is mutual to the prisoner, and to the prosecutor; for there may be sources of prejudice in favor of the prisoner, as well as against him.

When the prisoner and prosecutor decline to challenge any of the members, or where the causes of challenge have been disallowed, the judge-advocate proceeds to administer to the members of the court, the oath prescribed by law. The oath is taken by each person holding up his right hand, and repeating the words after the judge-advocate; and after the oath has

been administered to all the members, the president administers to the judge advocate the particular oath of secrecy to be taken by him. But it is lawful for any member of a court-martial to administer the oath to all the other members of the court. The oath to be taken by the president and members, contains a two-fold obligation of secrecy: 1st, That they will not divulge the sentence of the court, until it shall be published by proper authority: and 2d, That they shall not disclose, or discover, the vote, or opinion, of any particular member of the court-martial, unless required to give evidence thereof, by a court of justice in a due course of law. Both these obligations have their foundations in reason and good policy. No sentence of a court-martial is complete or final, until it has been duly approved.—Until that period, it is, strictly speaking, no more than opinion, which is subject to alteration, or revision. In this interval, the communication of that opinion could answer no ends of justice, - but might, in many cases, tend to frustrate and defeat them.—The obligation to perpetual secrecy, with respect to the votes or opinions of the particular members of the court, is likewise founded on the wisest policy. The members of a court-martial cannot boast of the same independence of the executive, and consequent immunity from influence, as the judges in the ordinary courts of law. The officers who compose a military tribunal, are necessarily, in some degree, under the influence of their commander in chief, which might sometimes lead a weaker mind astray from the direct path of justice. This danger is therefore best obviated by the confidence and security which every man possesses, that his particular opinion is never to be divulged. Another reason of a nature yet stronger, is, that the individual members of the court may not be exposed to the resentment of parties, and their connexions, which can hardly fail to be excited by those sentences, which it is often necessary for a court-martial to pronounce. It may be necessary for officers, in the course of their duty, daily, to associate, and frequently be sent on the same command, or service, with a person, against whom they have given an unfavorable vote, or opinion, in a court-martial. The publicity of these votes, or opinions, would create the most dangerous animosities, equally fatal to the peace and security of individuals, and prejudicial to the public service.

The oath of the judge-advocate contains the same obligation to secrecy, except so far as relates to the person who has the approving of the sentence of the court, to whom it may be of material importance, previously to that approbation, to have the opinion of the judge-advocate, with regard to the propriety, justice, and legality of the sentence of the court. The judge-advocate is, however, bound by oath, as well as the members of the court, to maintain the strictest secrecy, with regard to the

votes, or opinions of individuals, for the same reasons of expediency and good policy.

The oaths which are taken previously to the proceeding at the court-martial to any trial, form, in fact, the essentials by which the court is constituted; they, therefore, create an obligation, which is binding on all the members, until it is finally dissolved. It is, on that account, unnecessary and improper (for all unnecessary oaths are improper,) for the same court-martial to repeat the ceremony of taking those oaths, for every new trial. It has been urged in opposition to this doctrine, that the privilege of challenging the members of the court being competent to every prisoner, and custom requiring, that such challenge should be made before the members are sworn, if that form were not to be repeated in the commencement of every new trial, none could avail themselves of the right, but the first who was arraigned. But there is no reason of justice or common sense, that should preclude a person from challenging, on sufficient cause, any of the members, after the court is sworn, provided he had no opportunity of moving his objection before the form was gone through. An objection cannot be said to be waived, which the objector had no power of urging: may, let the case be supposed, had a prisoner positively declined to challenge any of the members of the court, being ignorant at the time of any competent objection; in consequence of which, all the members are solemnly sworn, and the trial is entered upon, and afterwards a just cause of challenge comes to the prisoner's knowledge, emerging, perhaps, from the evidence itself, can any doubt be entertained, that such challenge ought to be allowed the prisoner?

The court being now regularly constituted, and every preliminary form gone through, the judge-advocate, as prosecutor for the state, desires the prisoner to listen to the charge or charges exhibited against him, which he reads with an audible voice; and then the prisoner is asked, "whether he is guilty, or not guilty, of the matter of accusation." Thus arraigned, the prisoner may either, 1st, stand mute; that is, refuse to answer, or answer foreign to the purpose: 2d, Confess the fact of which he is accused; or 3d, Pleading not guilty to the charge. It was formerly the practice of courts-martial, in case the prisoner stood mute from obstinacy, or answered foreign to the purpose, to proceed against him, as if he had regularly pleaded guilty; particularly after endeavoring, with wisdom and temperance to overcome his obstinacy, by setting forth the consequence which awaited him; and as the highest punishment that can be inflicted for an offence against the military law of the state is cashiering, and such conduct in an officer arraigned for trial, would be highly unmilitary, and unbecoming an officer, this practice would still be preferable to the rule enjoined by the 70th article

at war, which prescribes, "that when any prisoner arraigned before a general court-martial shall, from obstinacy and deliberate design, stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had regularly pleaded not guilty."

A prisoner's ignorance of the language in which he is arraigned, and in which the trial is to be conducted, may bring him into a predicament somewhat similar to that of standing mute. In such case, it is necessary that a neutral person of ability and discretion, who is equally skilled in both languages, should be sworn to interpret between the prisoner, and the prosecutor and court. This interpreter must, in the first place, explain to him, distinctly, the import and substance of the charge, and deliver to the court his answer to the accusation; and, during the whole course of the trial, he must translate, for the benefit of the prisoner, the report of the evidence of each of the witnesses, and put such questions as the prisoner shall suggest, either in the way of cross-examination of the witnesses, for the prosecution, or directly as exculpatory proof.

2d, If the prisoner plainly and explicitly confess the crime with which he is charged, nothing remains for the court but to pronounce judgment. But as the essence of a crime is the intention with which it is committed, and the mind of that offender is less obstinately and inveterately malignant, who, under a strong impression and consciousness of guilt, explicitly avows it, and throws himself upon the mercy of his judges, than of one, who, guilty of the same crime, has the hardihood to persist in a denial of his guilt, and boldly to abide the issue of a trial; therefore, it would seem that the punishment in such cases should be less rigorous. But 3d, the most customary plea of a prisoner, and always the most desirable, is the general issue, or that of not guilty of the charge; and this plea must be simple, and without qualification or justification; that is an absolute denial on the part of the prisoner, of the crime which is laid to his charge.—If he has any matter of justification to offer, it may be given in evidence, and the court, in framing their sentence, will pay the same regard to it, as if such special matter had been, or could have been, specially pleaded.

But a prisoner, who neither stands mute, confesses the crime, nor pleads not guilty to the charge, may, immediately upon his arraignment, offer certain pleas in bar of the trial; as, that he has been formerly tried for the same individual act, or acts of crime; which, if verified by production of the record of his acquittal, or conviction, or even by other sufficient evidence, must effectually quash the trial. It may be easily understood, however, that the plea of a former acquittal can be of no avail, if the new trial is brought in appeal from the judgment of the court, which had pronounced the sentence of acquittal. A pardon of

the crime, for which the prisoner is arraigned, is likewise a valid plea in bar; nor is it to be doubted that a promise or assurance of mercy given on condition of becoming evidence against an accomplice, or a criminal, who is tried for the same offence, would be admitted by the court as an effectual bar of the trial of the person who pleads it, and verifies his plea. But, with respect to these pleas, in bar, it is proper to remark, that although if admitted they are conclusive, in favor of the prisoner, they are not, if repelled, conclusions against him who wages them; that is to say, if the court shall determine against him, on the plea in bar, he shall not therefore be immediately convicted, but shall still be at liberty to resort to the general issue.

A prisoner, moreover, may validly object to the jurisdiction of the court, if it appears that they have no proper authority for taking cognizance of the offence; as if a soldier were arraigned before a court-martial for a crime cognizable only by the civil courts. It would be likewise a good objection, that the court did not consist of the requisite number of members; or that these were not of the requisite rank to sit upon the trial of the prisoner.

The prisoner having pleaded the general issue of not guilty, the prosecutor proceeds to produce his evidence in support of the charges, by the examination of witnesses and the production of such written documents as tend to substantiate and prove the matters of accusation: a list of the witnesses having been furnished to the prisoner, previously to the trial, that he may be aware of, and have full time to deliberate on, any objection, that may be against their admissibility; or prepare himself to encounter their testimony by contrary evidence. If the accusation resolves itself into a variety of distinct articles, or charges, the court will allow the prisoner his option, whether to urge his defence and examine witnesses separately, to each article, or to enter upon the general proof of exculpation, after the prosecutor has gone through the whole of his evidence in support of the charges. The former mode of procedure seems the more eligible, when the prisoner is charged with several distinct and separate crimes; the latter, when the charges, though consisting of separate acts, either amount to the same crime, or are intimately connected.

In order to maintain regularity in the proceedings of the court, the witnesses in support of the charges are first examined by the judge-advocate, or prosecutor; and when he has finished his interrogatories, the prisoner is allowed to cross question, that is, to put any relevant questions that may occur to him, arising from, and relative to, the evidence already given. When the prisoner has finished his cross questioning, the court may put any questions they may think proper, in explanation of what has been already sworn, or in farther proof of the articles

of charge. It is of importance that this rule, which is common to all criminal courts, should be strictly observed. A deviation from it deranges the chain of evidence, and introduces confusion and perplexities in the record of the proceedings.

The judge-advocate, who is recorder of the court, takes down the whole of the evidence, in writing, from the mouth of the witnesses; beginning each testimony with the name and designation of the witness, and noting whether he be a witness for the prosecution, or for the prisoner: as "A B, captain in the regiment of infantry, a witness for the prosecution, solemnly sworn and examined, says as follows."

The evidence is most usually taken down in questions and answers, each interrogatory denoting the party, who puts it: as, Quest. by the prosecutor: Quest. by the court: Quest. by the prisoner. Sometimes, however, the witness gives his testimony in the way of narrative; in which manner it must likewise be taken down in writing; the recorder adhering as nearly as possible, to the very words of the witness.

No witness is permitted to read his evidence to the court; for this might give room for subornation of evidence, against which, every court is most anxious to guard, by the preliminary questions, whether the witness has been instructed what to say, or has received any reward for giving his testimony. Although, however, the witness is not allowed to read his evidence, it is not illegal, or improper, in circumstantial cases, or in cases where dates are to be detailed, or in matters of account, for the witness to make use of written notes, for the aid of his memory, and for the greater precision of his testimony.

The more effectually to guard the purity of the evidence, those, who are cited to appear as witnesses, are not allowed to be present in the court during the examination of any of the previous witnesses; as this circumstance would, of itself, afford a valid objection to the testimony, being a species of subornation. It is proper, therefore, that in the commencement of the trial, and, indeed, in the outset of every day's proceedings, the judge advocate should give warning to all, who are cited as witnesses, and who may chance to be present, to retire, and not to enter the court, 'till they are officially called up to be sworn.

Courts-martial being generally composed of men of ability, and discretion, but who, from the nature of their profession, and general mode of life, are not to be supposed versed in legal subtleties, or abstract and sophistical distinctions; and the cases, that come before them, giving rise to few questions of law, it has been considered as founded in established usage, that counsel, or professional lawyers, are not allowed to interfere in their proceedings; or by argument, or pleading, of any kind, to endeavor to influence either their interlocutory opinions, or final judgment. It is, however, not unusual for the court, upon

the prisoner's request, to allow him the aid of counsel to assist in his defence, either in the proper conduct of exculpatory proof, by suggesting interrogatories to witnesses, or in drawing, in writing, a connected statement of his defence, and observations on the general import of the evidence. This benefit the court will never refuse to a prisoner; because, under the unhappy circumstances, the party may either want ability to do justice to his own cause, or may be deserted by at presence of mind, which is necessary to command and bring into use, such abilities, as he may virtually possess. In this situation, however, the prisoner's counsel, who properly understands his duty, will see it is his part, not to embarrass, tease, or perplex, the court, but rather to conciliate their favor, by wisely regulating the conduct of his clients; nor to force the axiom and rules of the civil courts upon a military tribunal, it to instruct himself in the law, which regulates their procedure, and accommodate himself to their forms and practice.

When the evidence in support of the charges is closed, the prisoner sometimes judges it proper to submit to the court, either verbally, or in writing, a general statement of the defences, which he means to support by evidence. He then enters on his exculpatory proof, by examining such witnesses, as he thinks material, to refute the preceding evidence, or to establish his general character and good behavior, or by producing written documents to this effect. The examination of the exculpatory witnesses is conducted in a similar manner to that of the evidence of the prosecution. The prisoner first interrogates his own witnesses, putting his question either himself, or by the mouth of the judge-advocate. When his interrogatories are ended, the prosecutor is entitled to cross examine the witness; and, finally, the court put all questions to the witnesses, that appear to them proper for bringing out the truth. When the whole evidence on both sides is closed, the prisoner may, if he thinks proper, demand leave of the court to sum up, either verbally, or in a written statement, the general matter of defence, and to bring, into one view, the import of the proof of the charges, with such observations, as he conceives are fitted to weaken its force; and the result of the evidence in defence, aiding any argument that is capable of giving it weight. To this statement on the part of the prisoner, the prosecutor has a right of reply; and under this privilege, he may either recapitulate, codize the import of his evidence, and strengthen it by pertinent argument, or shew the weakness and insufficiency of the proof in exculpation; and here, in strict regularity, the trial ends. If the prisoner shall, in his defence, have impeached the credit of any of the witnesses for the prosecution, it is competent to the prosecutor to re-establish their character by new evidence; or if the prisoner, in his defence, shall have introduced any

new matter, encountering the evidence of the charge, but to which that evidence was not directed, the prosecutor is allowed to examine the witnesses relative to this new matter; as, for instance, a prisoner is charged with an act of mutiny, and the charge is clearly proved, but the prisoner, in his defence, al-leges, and adduces evidence to shew, that he was compelled by others to the commission of that act, against his own will, and at the hazard of his life. This being new matter, to which the former evidence for the prosecution does not, in the least, apply, the prosecutor is allowed to submit, by the examination of witnesses, or the production of such documents as he thinks fit, to disprove it. In such cases, it is customary for the court to allow the prisoner the liberty of a rejoinder, or answer, to the prosecutor's reply; an indulgence, to which, in ordinary cases, he is not entitled.

It frequently happens, that the tendency of a question put to a witness may be to the prejudice of a third person, who is no party to the trial. This consequence ought, in justice and humanity, to be avoided, whenever it is possible; and, in no case, ought the prosecutor to be allowed this liberty of indirectly impeaching, or attacking the characters of third parties; because it cannot be necessary to his purpose; but it may sometimes happen, that the party accused may find it absolutely necessary, in defence of himself, to throw blame, and even criminality on others, who are no parties to the trial. Nor can a prisoner be refused that liberty, which is essential to his own justification. It is sufficient for the party aggrieved, that the law can furnish ample redress against all calumnies, or unjust accusations.

Witnesses may be called to support the credibility of witnesses, either by giving testimony to their general good character, or to their knowledge, or acquaintance with the facts in issue; or to their having invariably related facts in the same manner. If, therefore, the credibility of any of the witnesses, either for the prosecutor, or prisoner, is impeached by the opposite party, it becomes proper to re-establish their credibility, by examining new evidences thereto.

All military persons are bound by their duty to attend and furnish testimony in all military courts, whenever required so to do by proper authority. This authority is contained in the warrant, or order, for assembling the court martial; and, in consequence thereof, the prosecutor and prisoner, must, respectively, summon, or give warning to, those persons, whose evidence is necessary, of the time and place of meeting of the court, and make requisitions for their compliance to give testimony.

All witnesses must be regularly sworn in the presence of the court, and of the parties, and give their testimony likewise in their presence. The testimony of the witness is to be taken

down in writing; as nearly as possible, in his own words, and read to him for his approval, or correction, after his testimony is closed.

In case a material witness should be confined to his room by sickness, so as to prevent his appearance before the court, the only correct method of obtaining his testimony is, for the court to adjourn to the house and bed-chamber of the sick person, and there take down his evidence in the usual form; or, if that cannot be done, by the judge advocate and the prisoner writing their interrogatories, and cross interrogatories, and by a magistrate's receiving the answers of the witness, on oath, and certifying them to the court.

All objections to the competency of a witness must be stated in open court; but as a court-martial never deliberates with open doors, the court must be cleared, in order to weigh the import of the objection; and when the court have come to a resolution, it is afterwards communicated, in open court, to all parties. If wilful perjury is committed by any person brought to give evidence in a court martial, the court will direct the party injured, or the judge-advocate, as public prosecutor, to prosecute the offender in the proper civil court. Subornation of perjury, or the procuring of witnesseses to swear falsely, stands on the same footing with perjury.

### CHAP. III.

#### *Of the judgment of a Court-Martial.*

The last stage of the trial before a court-martial is the exercise, by the court, of its judicial functions, in the return of a solemn verdict on the guilt, or innocence, of the prisoner, and pronouncing sentence; and this is to be done with closed doors, after the parties, and all indifferent persons, have been ordered to withdraw.

As the court is now in possession of all the evidence, which has been carefully reduced into writing, by the judge-advocate, as recorder of the court, together with all arguments upon the evidence, both on the part of the prosecutor and prisoner, it is customary, before proceeding to deliberate upon the judgment, that the court should hear the proceedings read over by the judge-advocate; which answers the double purpose of bringing the whole body of evidence, in one connected view, to the recollection of the members, and ascertaining the accuracy and fidelity of the record, by comparing it with the notes taken by individual members, in the course of the trial.

When there are distinct and separate charges, or articles of accusation, the president and members of the court reason, and deliberate on each charge, separately; candidly discussing, in

free and open conversation, the import of the evidence, and allowing its full weight to every argument, or presumption, in favor of the prisoner; and being thus ripe for the decision, the judge advocate puts the question of "guilty, or not guilty of the charge," to each of the members, beginning with the youngest, and so progressively up to the president; and writing down, from each member, his vote and opinion, for acquittal, or conviction. The votes are then counted; and if the majority declare the prisoner not guilty, he is accordingly acquitted: if, on the other hand, the majority declare the prisoner guilty, the court proceeds next to determine what punishment shall be awarded, and to pronounce their sentence for its infliction. The opinions and votes of the members are taken in this last question in the same manner as in the former.

Of the punishments peculiar to the rank of officers, the most severe is cashiering; that is, depriving an officer of his commission, breaking him, by taking from him the honorable character of a soldier, and reducing him to the station of a private citizen.

2. Suspension, which deprives an officer of his military character, and suspends his functions for a definite period of time, as a year, six months, or three months, from the date of the sentence, according to the culpability of the officer.

3. Reprimand, public, or private. A public reprimand is inflicted by the officer, approving the sentence of the court-martial, or by the commanding officer of the regiment, &c. to which the party may belong, according to the terms of the sentence. The severity of the reprimand is not prescribed by the sentence, but is left to the discretion of the commanding officer, by whose authority the sentence is put into execution; and it must be regulated according to circumstances, and the degree of the offence. A private reprimand is given by the commanding officer, to the party, without the presence of witnesses.

The punishment peculiar to the state of non-commissioned officers and privates, is fine.

In general, the sentence of a court-martial declares the prisoner guilty, or not guilty, of the special matters of the charge, and in the event of guilt, awards the proper punishment. But, sometimes, the degree of criminality actually proved against the prisoner, though of the same nature, may fall short, in extent, of the accusation. In such case, the court, by its judgment, ought to acquit the prisoner of the charge, but find him guilty of the inferior offence, and award a corresponding punishment. But, though this rule ought to be followed where the offence proved is of the same nature, though less in degree than the crime contained in the charge, it will not hold good where the offence proved against the prisoner is either of a different nature, altogether, from that, which is charged, or of a higher de-

gree of criminality; for the court is not warranted to go beyond the indictment; nor has the prisoner received a fair and legal notice to prepare his defence against either a different crime, or a higher degree of guilt, than is contained in the charge. If, therefore, evidence should emerge, in the course of the trial, of greater criminality, against the prisoner, or of his guilt of a separate crime, it is competent for the court, after exhausting the actual charges, by their proper sentence, to report their opinion to the commander, by whose order the court is held, in order that he may be brought to a new trial.

The form of the sentence of the court-martial must vary according to the circumstances of the case, on which it is pronounced; but, a few observations may here be made applicable to all sentences whatever, of general courts-martial. As to the tenor of the oath administered to all the members of the court, they are sworn, at no time whatsoever, to declare the particular vote, or opinion, of any member, unless required to give evidence thereof, in a court of justice, in a due course of law; so that it is, evidently, not proper that the sentence of a court-martial should express by what majority of the members it was pronounced; because that might lead to the discovery of particular votes, or opinions; nor, although the court is unanimous in its judgment, is it proper to express that circumstance in the sentence; for this, in fact, is disclosing the opinions and votes of all the members.

The opinions and sentence of the court may be either general, in their tenor, that is, declaring the prisoner guilty, or not guilty, of the articles of charge; or they may be special, finding certain parts proved, or not proved; in consequence of which, they declare him guilty, or not guilty, on those articles; for, in all cases, the guilt, or innocence, of the prisoner, with respect to the particular charges, must be pointedly proved and declared; otherwise, the court do not discharge the whole of their duty, which requires that they should not only decide whether the facts are proved, or unproved, but likewise pronounce their judgment on the criminality of those facts.

It is advisable for courts-martial, in their opinions and sentences, to avoid all unnecessary minuteness in detailing and specifying the grounds of those opinions and judgments; and, in particular, to avoid all arguments, in justification of their sentences; for, it is unwise in any court, to hold forth to the public a challenge to impugn their judgment; or, purposely, to invite to a discussion of the grounds, on which they have proceeded. If a sentence be general, and without any assignment of special reasons, it may be defended by all good reasons, which are applicable to the matter; but if it assign its special grounds, it must stand, or fall, by those alone. It must, at the same time, be observed, that in cases of a circumstantial nature, and when the

Sentence of the court is not general upon the whole matters of charge, but special, finding the prisoner guilty of some points of accusation, and acquitting him of others; as the punishment to be awarded, ought to be in strict proportion to the measure of guilt, so it may be extremely proper, in such cases, to specify, in the sentence, the particular grounds of the opinion and judgment of the court.

## CHAP. IV.

*Of the office and duties of the Judge Advocate.*

For sustaining the interest of the state, in trials before courts-martial, an officer is appointed under the title of judge-advocate, to prosecute, in its name; for, as in all criminal trials, the state, whose laws are violated, is understood to be the party injured, and is entitled to demand redress, by the punishment of the guilty person; which function, in the ordinary courts of law, is discharged by the attorney-general, or a circuit solicitor, so, in offences against the military law, which are not cognizable by the ordinary tribunals, but are declared to be specially so by courts-martial, the judge-advocate is appointed to fulfil a similar duty; and to prosecute, in the name of the state, all officers and soldiers, who shall be guilty of any breach of the military law. It is understood to be his duty to explain any doubts which may arise in the course of their deliberations, and prevent any irregularities, or deviations, from the regular form of proceeding. For it is to be observed, that in all matters touching the trial of crimes by courts-martial, wherever the military law is silent, the rules of the common law of the land, to the benefit of which all citizens are entitled, for the protection of life, liberty and reputation, must, of necessity, be resorted to; and every material deviation from these rules, unless warranted by some express enactment of the military code, is, in fact, a punishable offence in the members of the court martial. Hence arises the absolute necessity for some members of the court being conversant in the general doctrines of the law, so far as they relate to the trial of crimes, and the weighing of evidence; and the person, to whom the court is naturally to look for information of this kind, is the judge advocate, who is either by profession a lawyer, or whose duty, if he be not professionally such, it is to instruct himself in the common law, and practice of the ordinary courts, in the trial of causes.

In the performance of this duty, the judge advocate will always be guided by a just sense of his official character and situation. As he has no judicial power, nor any determinate voice, either in the sentence, or interlocutory opinions of the court, so he is not entitled to regulate, or direct their sentences.

or opinions, or, in any other shape, to interfere in the proceedings of the court, farther than by giving consent, or advice, and his own discretion must be his sole director in suggesting when that may be seasonable, proper, or necessary. On every occasion, when the court demands his opinion, he is bound to give it with freedom and amplitude; and even when not requested to deliver his sentiments, his duty requires that he should put the court upon their guard against every deviation, either from any essential, or necessary, forms in their proceedings, or a violation of justice in the final sentence and judgment. A remonstrance of this nature, urged with due deference and respect, will seldom, it is to be presumed, fail to meet with its proper regard from the court; but, should it happen that an illegal measure, or an unjust opinion is, nevertheless, persevered in, the judge-advocate, though not warranted to enter his dissent in the form of a protest, upon the record of the proceedings, (for that implies a judicative voice) ought to engross therein the opinion delivered by him upon the controverted point, in order, not only that he may stand absolved from all imputation of failure in his duty of giving counsel, but that the error, or wrong, may be fairly brought under the consideration of that power, with whom it lies, in the last resort, either to approve, and order into effect, or to remit the operation of the sentence.

Another part of the official duty of the judge-advocate is, that he should assist the prisoner in the conduct of his defence. This duty is more especially incumbent on the judge-advocate, in cases where the prisoner has not the aid of professional counsel to direct him, which generally happens in the trials of private soldiers, who, wanting all the advantages of education, or mortal improvement, must stand greatly in need of advice in such circumstances as are often sufficient to overwhelm the acutest intellect, and embarrass, or suspend, the powers of the most cultivated understanding. It is certainly not to be understood, that, in discharging this office, which is prescribed by justice, and humanity, the judge-advocate should, in the strictest sense, consider himself bound to the duty of a counsel in exerting his ingenuity to defend the prisoner, at all hazards, against those charges, which, in his capacity of prosecutor, he is, on the other hand, bound to urge, and sustain by proof. All that is required is, that, in the same manner as in the civil courts of criminal jurisdiction, the judges are understood to be counsel for the person accused; the judge-advocate, in courts-martial, shall do justice to the cause of the prisoner, by giving full weight to every circumstance, or argument, in his favor; shall bring the same fairly and completely into the view of the court; shall suggest the supplying of all omissions in the lending of exculpatory evidence; shall engross in the written proceedings, all matters, either directly, or by presumption, tending to the prisoner's

defence; and, finally, shall not avail himself of any advantage which superior knowledge, or ability, or his influence with the court may give him, in enforcing the conviction, rather than the acquittal, of the person accused.

When a court-martial is summoned by the proper authority, for the trial of any military offender, the judge-advocate being required to attend his duty, and furnished with articles of accusation, or charge, on which he is to prosecute, must, from the information of the accuser, instruct himself in all the circumstances of the case, and by what evidence the whole particulars are to be proved against the prisoners. Of these, it is proper that he should prepare, in writing, a short analysis, or plan, for his own regulation in the conduct of the trial, and examination of the witnesses. He ought then to give the earliest information, to the prisoner, of the time and place appointed for his trial, and furnish him, at the same time, with a true copy of the charges, that are to be exhibited against him, with the names and designations of the witnesses, by which they are to be proved, or supported; and likewise a correct detail of the members of the court-martial. He should, at the same time, require from the prisoner, a list of the witnesses, whom he intends to adduce in his exculpation, that the privilege may be mutual to both parties, of objecting to such evidence as they judge either inadmissible, or of suspected credibility.

It seems, in no case, to be improper, and may often tend to the furtherance of justice, as well as the shortening of judicial proceedings, that the judge-advocate, on whom lies the conduct of the evidence of the prosecution, and the discretionary power of examining such witnesses only as he may deem necessary, should be previously acquainted with the general nature of the prisoner's defence: and for that purpose, should either converse with himself, or with his counsel, before proceeding to trial. It has sometimes happened, that, by a timely explanation, in such previous conference, circumstances of the charge, apparently the most unfavorable, have been alleviated, or done away, and even the necessity of a trial altogether superseded, by the anticipation that such a conference afforded of a judgment of acquittal from the chief matters of accusation.

When the court is met for trial, and the members are regularly sworn, the judge-advocate, after opening the prosecution, by a recital of the charges, together with such detail of circumstances as he may deem necessary, proceeds to examine his witnesses in support of the charges; while, at the same time, he acts as recorder, or clerk of the court, in taking down the evidence, in writing, at full length, and, as nearly as possible, in the words of the witnesses. At the close of the business of each day, and in the interval, before the next meeting of the court, it is his duty to make a fair copy of the proceedings; which

he continues thus regularly to engross, till the conclusion of the trial; when the whole is read over by him to the court, before the members proceed to deliberate and form their opinions.

The sentence of the court must be fairly engrossed, and joined to the record copy of the proceedings, and the whole must be authenticated by the signature of the president of the court, and that of the judge-advocate.

It is proper, that the judge advocate, or the person officiating as such, should retain in his possession, and carefully preserve, the original minutes of the proceedings, drawn up by him in court, during the course of the trial; and likewise, his notes of the opinions and votes of the members; that, in case of any after questions, that may be moved in the ordinary courts of law, touching the conduct, or result, of the trial, the judge-advocate may have recourse to them as necessary documents, if he should be called upon to give evidence in relation thereto.

## CHAP. V.

### *Of Courts of Inquiry.*

Courts of inquiry are held by the same authority, as courts-martial, and have power to examine witnesses on oath, and compel their attendance in the same manner; but they are entrusted with powers only to examine into the nature of any transaction, accusation, or imputation, against any officer, or soldier. But they are not empowered to give their opinion on the merits of the case, except they shall be thereunto specially required. Courts of inquiry may consist of any number not less than three, one of whom, at least, to be of the rank of the accused, and a judge-advocate, or other suitable person, as a recorder, to reduce the proceedings, and evidence, to writing, all of whom must be sworn to the faithful performance of their duty. The forms of proceeding in courts of inquiry are nearly the same as in courts-martial. The members being assembled, the judge-advocate, or recorder, administers to the members, the following oath, "you shall well and truly examine and inquire, according to your evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: So help you God." After which, the president administers to the judge-advocate, or recorder, the following oath: "you do swear that you will, according to your best abilities, actually and impartially, record the proceedings of the court, and the evidence to be given in the case in hearing: So help you God." The accusation is then read, and the witnesses are examined by the court; and the parties accused are also permitted to cross examine and interrogate the witnesses, so as to investigate fully the circumstances in question.

The examination of the witnesses being gone through, the president orders the court to be cleared. The recorder then reads over the whole of the proceedings, as well for the purpose of correcting the record, as for aiding the memory of the members of the court. After mature deliberation on the evidence adduced, they proceed to declare, whether, or not, the grounds of accusation are sufficient to bring the matter before a court-martial; or to give their opinion of the merits of the case, if so required in the warrant issued for assembling the court.

The proceedings must be authenticated by the signature of the president, and delivered to the commanding officer; and the said proceedings may be admitted in evidence by a court-martial, in cases not extending to the cashiering of an officer, provided oral testimony cannot be obtained.—See also title Militia, sec. xlvi.

*1. Order for holding a Court-Martial.*

**General, Division, Brigade, Regimental, Battalion, or Company Orders, as the case may be.**

A court-martial, to consist of the following members, to wit: (here name the president and other members of the court—see title Militia, sec. xlvi.) will convene at      in      on the day of      , for the trial of      (or, for the trial of all defaulters, at      on the      day of      last past.)

(Signed) \_\_\_\_\_

(Or by order of      )

*2. Warrant for holding a Court of Inquiry, issued by order of the Governor, and Commander in Chief.*

Whereas certain charges of misconduct have been alledged against major-general      of the      division of the militia of this state, on the      day of      a court of inquiry, to consist of (see title Militia, sec. xlvi.) is hereby ordered to convene at      on the      day of      , to examine and inquire into the nature of the said charges; which charges, together with the evidence in support thereof, will be laid before the court, by the judge-advocate: And the court is hereby required to report its opinion, as to the real merits of the case, for the information of the governor: and for so doing, this shall be a sufficient warrant. Given under my hand and seal at      the      day of

By command of the Governor,

J. B. E.  
Adjutant-General

## COURTS MARTIAL.

3. *Regimental Court of Inquiry,**At the request of Major ——.*

## REGIMENTAL ORDERS,

Nov. ——, 1821.

In consequence of certain reports injurious to the honor and reputation of major A. B. of the regiment, having been circulated through the regiment, and elsewhere, by some person, or persons, unknown, a court of inquiry, to consist of three members, is hereby appointed at the particular request of major A. B., to convene at —— on the day of —— for the purpose of examining and inquiring into the nature of the said reports, and the causes which have given rise to them.

Major B C, President.

Capt. C D, }  
Lieut. D E, } Members.

Lieut. E F will act as recorder.

By order of Col. G H.

I. J. Adjutant.

4. *Manner of sitting at a Court-Martial.*

## President 1.

| Members. | Members. |
|----------|----------|
| 2        | 3        |
| 4        | 5        |
| 6        | 7        |
| 8        | 9        |
| 10       | 11       |

Prosecutor.

Prisoner.

Judge Advocate.

## COURTS MARTIAL.

577

### 5. Record of the proceedings of a Court-Martial.

Proceedings of a battalion court-martial, held at \_\_\_\_\_ on the day of \_\_\_\_\_ by virtue of the following order:

Battalion Orders, ——, Nov. 5, 1821.

A battalion court-martial, to consist of \_\_\_\_\_ members,\* will assemble at \_\_\_\_\_ on the 25th day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, A. M. for the trial of \_\_\_\_\_ (or, of such prisoners as shall be brought before it.)

\_\_\_\_\_, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Memb.  
\_\_\_\_\_

\_\_\_\_\_, Recorder.

\_\_\_\_\_, 25, 1821,

The court met in pursuance of the above order.

Present:

\_\_\_\_\_, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Memb.  
\_\_\_\_\_

\_\_\_\_\_, Recorder.

The court being duly sworn, in the presence of the prisoner, (or prisoners) proceeded to the trial of \_\_\_\_\_, who being previously asked if he had any objection to the members named in the order, and replying in the negative, was arraigned on the following charge, preferred against him by \_\_\_\_\_ of (here insert the charge.) To which, the prisoner pleaded not guilty.

A. A., a witness for the prosecution, being duly sworn, says, that, &c.

Question by the court. Did &c. —?

Answer. —.

Question by the court. —?

Answer. —.

Question by the prisoner. —?

Answer. —.

The court then adjourned, to meet to-morrow, at 10 o'clock.

\* See title Militia, sec. xliii.

## COURTS MARTIAL.

—, 26, 1821.

The court met according to adjournment.

Present

\_\_\_\_\_, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Memb.

\_\_\_\_\_, Recorder.

\_\_\_\_\_, being sick and unable to attend, the court adjourned to meet again on the 30th inst.

Nov. 30, 1821.

The court met according to adjournment.

Present

\_\_\_\_\_, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Memb.

\_\_\_\_\_, Recorder.

\_\_\_\_ of \_\_\_, a witness for the prosecution, being sworn, says, that, &amp;c.

Question by the court. Did, &amp;c. —?

Answer. —.

Question by the prisoner. —?

Answer. —

The evidence on the part of the prosecution being closed, \_\_\_\_ of \_\_\_, a witness for the prisoner, being duly sworn, says, &amp;c.

Question by the prisoner. Did, &amp;c. —?

Answer. —.

Question by the court. —?

Answer. —.

The testimony on the part of the prisoner having been heard, he requests the indulgence of the court, one day, to prepare his final defence; which was accordingly granted. And the court adjourned, to meet again on the 2d of December, at 9 o'clock, A. M.

Dec. 2, 1821.

The court met pursuant to adjournment.

Present

\_\_\_\_\_, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Memb.

\_\_\_\_\_, Recorder.

The prisoner being asked if he were ready to proceed, made the following defence:

Mr. President, and  
Gentlemen of the Court:

(Signed) ——.

The court being ordered to be cleared, and the whole of the proceedings read over to the court, by the judge-advocate, the following sentence was pronounced, &c. The court, after mature deliberation, &c. ——

The sentence should be signed by the president, and counter-signed by the recorder.

6. Usual manner of approving the proceedings of a court-martial.

BATTALION ORDERS.

December 20, 1821.

At the battalion court-martial, of which —— is president, was tried —— on the charge of, &c. to which charge the prisoner pleaded not guilty.

The court, after mature deliberation, found the prisoner, —— guilty of the charge exhibited against him, and sentenced him "to, &c. ——"

Lieutenant-colonel —— approves the sentence of the court, and orders it to be carried into effect.

The battalion court-martial, of which —— is president, is hereby dissolved.

——, Lieut. Col.

M'Comb, ——.

## APPENDIX.

### AFFRAYERS.

#### 1. *Warrant to apprehend.*

\_\_\_\_ Parish, } To A. P, a constable of the parish (or dis-  
\_\_\_\_ District, } trict) aforesaid.

WHEREAS B. C. of the parish (or district) aforesaid, hath, this day, made oath before me, a justice of the peace, (or quorum) for the said parish, (or district) that, on the      day of      in the year      D. E. of      and F. G. of      at      in the said parish (or district) in a tumultuous manner, made an affray, wherein the person of the said B. C. was beaten and abused by them, the said D. E. and F. G. without any lawful, or sufficient, provocation given to them, or either of them, by him, the said B. C. these are, therefore, to command you, forthwith, to apprehend the said D. E. and F. G. and bring them before me, or some other justice of the peace, for the said parish, (or district) to answer the premises, and be further dealt with, as the law directs. Herein fail not, at your peril.

Given under my hand and seal, this      day of      in the year of our Lord      J. W. [L. s.]

\_\_\_\_ Parish, }  
\_\_\_\_ District, } 2. *Recognizance.*

Be it remembered, that on the      day of      in the year of our Lord      D. E. of the parish aforesaid, and A. B. and C. D. of the same place, personally appeared before me J. W. one of the justices assigned to keep the peace in the said parish, and acknowledged themselves to owe to the state of South Carolina: That is to say, the said D. E. the sum of one hundred dollars, and the said A. B. and C. D. each, the sum of fifty dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of the said estate, if the said D. C. shall make default in the condition under written.

The condition of this recognizance is such, that if the above bound D. E. shall personally appear at the court of general sessions of the peace, to be holden at      on the      day of

next, to answer to such matters as shall then and there be objected against him by B. C. of the same place, concerning the assault, beating, and wounding of the said B. C. by him the said D. E. and do not depart without leave of the court, then this recognizance to be void, or else, to remain in full force and virtue.

Acknowledged before me, this      day                          [L. s.]  
 of      in the year      J. W.                          [L. s.]

If the offender fails to enter into a recognizance, or give security for his appearance, he must be forthwith committed to gaol.

*S. Mittimus.*

— District. To the sheriff, or keeper of the gaol of the said district.

THESE are, in the name of the state, to command you to receive into your gaol, the body of D. E. of the said district, taken by my warrant, and brought before me, charged, upon oath, by B. C. of the same place, with assaulting, beating and wounding, the said B. C. in an affray, by the said D. E. and others, lately made; and that you safely keep him in your said gaol and custody, until he be thence discharged in due course of law.

Given under my hand and seal, this      day of      in the year of our Lord      J. W. [L. s.]

*APPRENTICE.*

1. *Indenture of an Apprentice, bound by the Commissioners of the Poor.*

*South-Carolina.*

THIS Indenture, made the      day of      in the year of our Lord      between A. B. C. D. and E. F. commissioners of the poor, of      district, in the state aforesaid, of the one part, and G. H. of the said district, tanner, of the other part, witnesseth: that the said A. B. C. D. and E. F. commissioners of the poor, as aforesaid, have put, placed, and bound, and, by these presents, do put, place, and bind, J. K. a poor boy, who has become chargeable to the said district, of the age of      years, to be an apprentice with him, the said G. H. to dwell, from the date hereof, as an apprentice with him, the said G. H. until the said J. K. shall come to the age of twenty-one years; (if a female, to the age of eighteen years, or marriage,) during which term, the said J. K. shall well and faithfully serve his said mas-

## APPENDIX.

ter, G. H. in all such lawful business, as the said J. K. shall be put to by the command of his said master, according to the wit and ability of him the said J K, and shall, in all things, honestly and obediently behave himself towards his said master, and honestly and orderly towards the rest of the family of the said G H; and that the said G H on his part, for himself, his executors and administrators, doth promise and covenant to and with the said A B C D and E F that he, the said G H will teach, instruct, and inform, or cause to be taught, instructed, and informed, in the best manner he can, the said J K the craft, mystery, and occupation of a tanner, as much as thereunto belongeth, or in any wise appertaineth, and which the said G H now useth; and that he the said G H shall also, during the said term, find and allow, unto the said J K, sufficient meat, drink, apparel, washing, lodging, and all other things needful and meet for an apprentice, in such a manner, that the said J K shall not, at any time, during the said term, be, in any wise, a charge to the said district. In testimony whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered }  
in the presence of — }

A B [L. s.]  
C D [L. s.]  
E F [L. s.]  
G H [L. s.]

*2. Complaint of an Apprentice, to two Justices', of his Master.*

— District.

THE information and complaint of J K, apprentice to G H, of the said district, tanner, taken before us, two of the justices assigned to keep the peace in and for the said district, the day of      in the year      who saith, that he, the said J K, about      months (or years) ago, was bound an apprentice, by indenture, to G H, of the district aforesaid, tanner, and that, at several times since he entered upon the said apprenticeship, the said G H hath misused and ill-treated him the said J K, and particularly (here recite the particular circumstances of ill-treatment.)

J K

Taken and signed the day and year

aforesaid, before us.

L M  
N O

*3. Warrant against the Master for misusing his Apprentice.*

— District.

WHEREAS complaint hath been duly made unto us, two of the justices assigned to keep the peace in the district aforesaid, by J K, apprentice unto G H, of the said district, tanner, that

the said G H, hath, at divers times, misused, and ill-treated him, the said J K, (here state the particular circumstances of ill-treatment.)

These are, therefore, to command you to cause the said G H, personally, to appear before us, at the house of      on the day of      at the hour of      in the morning of the same day, to answer to the said complaint; and also to cause the said apprentice to appear before us, at the same time and place, to make good his said complaint. Hereof fail not, at your peril.

Given under our hands and seals, this      day of      in the year

To P Q, constable.

L M [L. s.]

N O [L. s.]

*4. Complaint of the Master against his Apprentice to two Justices.*

— District.

THE complaint of G H, of the district aforesaid, tanner, taken before us, two of the justices assigned to keep the peace in and for the said district, the      day of      in the year      who saith, that J K, apprentice by indenture, to him, the said G H, hath, in the service of his apprenticeship, been guilty of several misdemeanors, miscarriage, and ill behavior, and hath been refractory and disobedient to him, the said G H, and particularly, (here cite the circumstances of ill behavior complained of.)

Taken and signed before us, the day

G H.

and year aforesaid.

L M

N O

*5. Warrant against the Apprentice on complaint of the Master.*

— District.

WHEREAS, complaint hath been duly made unto us, by G H, of the district aforesaid, tanner, that J K, now an apprentice, by indenture, to him, the said G H, hath been guilty of several misdemeanors, (or is refractory and disobedient, as the case may be) to him, the said G H, his master: these are to command you to bring the said apprentice before us, at on the      day of      at the hour of      in the morning of the said day, to answer to the said complaint, and be further dealt with, according to law: And you are to give notice to the said master, that he appear before us, at the same time and place, to make good the said complaint. Hereof fail not, as you will answer, at your peril.

Given under our hands and seals this      day of

L M [L. s.]

To P Q, constable.

N O [L. s.]

## APPENDIX.

*6. Order of two justices between master and apprentice.*  
district.

Between G H, master, and I K, his apprentice.

Upon hearing the allegations and proofs of both the parties in this case, and maturely considering the same, we do order and direct that (see title master and apprentice, sec. v.) Given under our hands and seals this      day of      in the year of our Lord

L M [L. s.]  
N O [L. s.]

*7. Assignment of an Indenture of Apprenticeship.*  
SOUTH-CAROLINA, }  
district. }

Know all men by these presents, that I, G. H. of the district and state aforesaid, for divers good causes and considerations, me thereunto moving, have given, granted, assigned and set over, and by these presents, do fully and absolutely, give, grant, assign, and set over unto R. S. all such right, title, duty, term of years to come, service and demand whatsoever, which I, the said G. H. have in, or to, I. K. or which I may or ought to have in him, by force and virtue of an indenture of apprenticeship, bearing date the      day of      in the year of our Lord      ; and that I, the said G. H. do, by these presents, covenant, promise, and agree, to and with the said R. S. his executors and administrators, that notwithstanding any thing by me the said G. H. to be done to the contrary, the said I. K. shall, during the unexpired term of the said indenture, well and truly serve the said R. S. as his master; and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term: provided the said R. S. shall well entreat and use him, the said I. K. and him, the said I. K. in the craft, mystery and occupation of a tanner, which he the said R. S. now useth, after the best manner that he can, shall teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also during the said term, find and allow unto the said I. K. sufficient meat, drink, apparel, washing and lodging, and all other things meet or needful for an apprentice. In testimony whereof, I have hereunto set my hand and seal, this      day of

G. H. [L. s.]

*8. Approbation of the Parent of the Apprentice.*

I, A. K. father of the abovementioned I. K. apprentice by indenture to G. H. do hereby declare my approbation of the sa-

sigment of the indenture of the said I. K. by the said G. H. to  
the said R. S.

Given under my hand and seal, this      day of

A. K. [L. s.]

Quere. Where a poor child is bound out by the commissioners, must the assignment be approved by them?

9. *Indenture of an Apprentice, executed in the presence, and with the approbation of the father, &c. and certified by a justice of the peace.*

THIS indenture, made this      day of      in the year of our Lord      between I. K. of the district of      of the one part, and G. H. of the same place, carpenter, of the other part, witnesseth, that the said I. K. in the presence, and with the approbation of A. K. his father, (mother or guardian, as the case may be,) hath voluntarily put, placed, and bound himself, and by these presents, doth voluntarily put, place, and bind himself, to be an apprentice with him the said G. H. and as an apprentice with him the said G. H. to dwell, till he the said I. K. shall attain the age of twenty-one years, which will be on the day of      in the year of our Lord      , during all which term, the said I. K. doth covenant and agree to, and with the said G. H. that he the said I. K. the said G. H. shall well and faithfully serve in all such lawful business, as he the said I. K. shall be put unto by his said master, according to the best of the wit and ability of him the said I. K. and honestly, obediently, and orderly, shall behave himself towards the said G. H. and his family. And the said G. H. on his part, doth covenant and agree to, and with the said I. K. that he the said G. H. will well and truly instruct the said I. K. in the art or mystery of a carpenter, which the said G. H. now followeth, and will use all due diligence to make the said I. K. as perfect in the said art or mystery of a carpenter as possible: and that the said G. H. will allow to the said I. K. good and sufficient meat, drink, apparel, washing and lodging, and all other things meet and proper for an apprentice during the said term. In testimony whereof, the parties have hereto set their hands and seals the day and year first above written.

I. K. [L. s.]  
G. H. [L. s.]

— district.

I. L. M. one of the justices assigned to keep the peace, in and for the district aforesaid, upon application of the above named G. H. do hereby certify, that the foregoing in-

## APPENDIX.

denture was executed in the presence, and with the approbation of A. K. the father of the above bound I. K.

Given under my hand this      day of      in the year      L. M.

The parties may add any other covenants that may be agreed on.

## ASSAULT AND BATTERY.

*Warrant.*District.

WHEREAS complaint hath been made unto me, a justice of the peace for the district aforesaid, upon the oath of A. B. of the said district, tailor, that B. C. of      , butcher, did, on the      day of      , in the year      , violently assault and beat him, the said A. B. at      , in the district aforesaid; these are therefore, to command you forthwith to apprehend the said B. C. and to bring him before me, or some other justice of the peace for the said district, to answer to the said complaint, and to be further dealt with according to law.

Given under my hand and seal, this      day of      in the year      J. W. [L. S.]

To A. B. constable.

[For recognizance and mittimus, see affrayers, 2, 3.]

## ATTACHMENT.

1. *Oath, under sec. 8, Title Attachment.*

SOUTH-CAROLINA, }  
district. }

This day, personally appeared, before me,      who being duly sworn, deposed, that      is justly indebted to him in the sum of \$      by      ; and that he has just grounds to suspect, and verily believes that the said      intends to remove his effects.

(Deponent's name.)

Sworn to before me, this

J. W.

2. *Oath under sec. 4.*

**SOUTH-CAROLINA,** }  
district. }

THIS day, before me, personally appeared , who being duly sworn, deposed that is justly indebted to him in the sum of \$ by , and that the said is removing out of the district, privately, (or absconded) and conceals himself, so that the ordinary process of law cannot be served upon him.)

(Defendant's name.)

Sworn to before me, the      day of

I. W.

3. *Warrant of Attachment on sec. 3.*

To all and singular the Sheriffs within the State of South-Carolina, and their respective deputies.

— District.

WHEREAS has this day appeared before me, one of the justices of the peace for the district aforesaid, and made oath, that is justly indebted to him in the sum of \$ by (note, &c.); and that he has just grounds to suspect, and verily believes, that the said intends to remove his effects: therefore, you and each of you, are hereby commanded to pursue and seize the effects of the said through whichsoever district of the state the said may be gone with his said effects, so that you make him a party in court, at the court of common pleas, to be holden at court-house, on in next, to answer to the said of the complaint aforesaid? And you, and each of you, are hereby further required to make return of the effects which may be by you so attached, to the same court, to be holden at the time and place aforesaid: and have you there this warrant. Given under my hand and seal this day of in the year of our Lord I. W. [L. S.]

4. *Warrant of Attachment on sec. 4.*

— District.

To the sheriff, or any lawful constable of the said district.

WHEREAS of hath this day made complaint on oath before me, one of the justices of the peace for the district afore-

## APPENDIX.

said, that      is justly indebted to him in the sum of \$      ; and that the said      is removing himself out of the district privately, or so absconds and conceals himself, that a warrant or summons cannot be served upon him; you are therefore commanded to attach the estate of the said      or so much thereof as shall be sufficient to satisfy the said debt and costs; and the same in your hands to secure, so as to be liable to further proceedings thereupon, to be had before me, or some other justice of this district, to whom you shall make return, how you have executed this warrant: and you are further commanded, that at the time of the service of this process, you do summon such person or persons, as may be indebted to, or have any of the effects of the said      to appear at the return hereof, to answer upon oath, what he, or she, or they, may be indebted to the said      , or what he, or she, or they, may have in his, her, or their, hands, of the effects of the said      Given under my hand and seal, this      day of      in the year of our Lord

I. W. [L. s.]

*Notice to be indorsed on a true copy of the warrant of attachment.*

To Ma.

You are hereby summoned, personally, to be and appear before me, or some other justice of the peace for this district, at the return of the within warrant, (if the warrant be returnable to court, say, at the court of common pleas to be held for the district of      at      on the - ) to answer, upon oath, what you are indebted to, and what effects of the within named      you have in your hands, or had at the time of the serving of this warrant.

I. W.

5. *Return of the sheriff, or constable, where a debt is attached in the hands of another person.*

By virtue of this warrant, I have attached, at      o'clock in the morning of the      day of      two horses, one waggon, &c. in the hands or possession of A. B. as the property of the within named      ; and I have moreover summoned the said A. B. to appear before the said I. W. (or court, as the case may be,) on the      , there to make return on oath, what monies, goods, chattels, debts, or books of account he has in his hands belonging to the said debtor.

P. Q. constable.

*If no effects, say,*

The within named      hath no estate in my precinct, whereof I can make the sum within mentioned.

P. Q. constable.

*Where the attachment is levied.*

By virtue of this warrant, I have attached      of the goods and chattels of the within named      ; which I have ready, as by the warrant I am required.

P. Q, constable.

*6. Judgment and Execution.*

— District.

*A. B. against C. D. in debt.*

The attachment obtained by the plaintiff against the estate of the defendant, being returned, executed before me, a justice of the peace for the said district, and the said defendant failing to appear, the plaintiff proved his debt according to law; and it is thereupon considered, that the said A. B. do recover against the said C. D. £      , and the costs of this suit: and the constable is ordered to sell the goods attached, according to law, to satisfy this judgment.

I. W. [L. s.]

*Return.*

By virtue of the within order, I have caused to be made the within mentioned sum of £      of the goods and chattels of the within named C. D.; which sum, before the justice within mentioned, I have ready, as within required.

P. Q. constable,

*7. Judgment against Garnishee.*

— District.

*A. B. against C. D. in debt.*

The attachment obtained by the plaintiff against the estate of the defendant, being returned executed in the hands of E. F. and it appearing to me, that there is now in the hands of the said E. F. of the estate of the said C. D. sufficient to satisfy the plaintiff's debt and costs; and the said plaintiff having proved before me his said debt; it is therefore considered that the said plaintiff do recover against the said E. F. the said sum of £      and the costs of this suit, and the constable, &c. as in No. 6.

I. W. [L. s.]

## APPENDIX.

## 8. Judgment for Defendant.

— District.

## A. B. vs. C. D. in debt.

The attachment obtained by the plaintiff against the defendant, being returned executed, and the said defendant, as well as the said plaintiff, appearing before me, and the said plaintiff failing to make proof of his said debt, it is considered that he take nothing by his plea; and that the said defendant's estate attached at the suit of the plaintiff, be restored to him: and moreover, that the said plaintiff do pay the said defendant his costs by him, about his defence expended: and the constable is hereby ordered to levy the same of the goods and chattels of the said plaintiff.

I. W. [L. s.]

## 9. Bond to be entered into by plaintiff, in attachment.

**SOUTH-CAROLINA,** } Know all men by these presents, that  
 district. } A B and B C of the district and state  
 aforesaid, are held and firmly bound unto C D in the full and  
 just sum of \$ , to be paid to the said C D, his certain attorney,  
 executors, administrators, or assigns; to which payment  
 well and truly to be made and done, they jointly and severally  
 bind themselves, and each and every of their heirs, executors,  
 and administrators, firmly by these presents; sealed with their  
 seals, and dated the day of

Whereas the above bound A B hath this day sued out an attachment against the estate of the above named C D, for the sum of \$ : Now the condition of the above obligation is such, that if the said A B shall satisfy and pay unto the said C D all costs that shall be awarded the said C D in case the said A B shall discontinue, or be cast in his said suit: and also, all damages, which shall be recovered against the said A B for his suing out the said attachment, then this obligation to be void, or else to remain in full force and virtue.

A B. [L. s.]  
B C. [L. s.]

Taken and acknowledged, the day and  
 year above written, before me.

J. P.

## 10. Replevin Bond.

(The obligatory part, the same as in No. 9.)

Now, the condition of the above obligation is such, that whereas an attachment from I. P. Esq. a justice of the peace

for this district, against the estate of the above bound C D, at the suit of A B, hath been levied on sundry goods of the said C D, which have been restored to him, upon his executing this bond; if therefore, the said C D shall appear before the said I P, or such other justice, as the said attachment shall be returned over to, and answer the said attachment, and also abide by, and perform the order, or judgment of the said I P, or other justice, then the above obligation to be null and void, &c.

C. D. [L. s.]  
E. F. [L. s.]

If the attachment be returnable to court, say, appear at the court of common pleas, to be holden for the district aforesaid, at     on the     , and answer the said attachment, and abide by, and perform the order or judgment of the court therein, &c.

### AWARD.

#### 1. Form of submission by rule of court, where a suit is depending.

A. B. } vs. } Case. In the Common Pleas,  
C. D. }

On motion of Mr.       , attorney for the plaintiff, and by consent of Mr.       , attorney for the defendant, ordered, that all matters in difference between the parties, on which this action is founded, together with costs of suit, be submitted to the determination, final ending, and award of Messrs. E F and G. H., that the said arbitrators, provided they agree, do make and return their award, under their hands and seals, to the office of the clerk of this court, on or before the first day of     term next; and in case they cannot agree, that then the said arbitrators shall have leave to choose an umpire, who shall make and return his umpirage, as aforesaid, on or before the     day of next, ensuing.

#### 2. Short form of an award under a rule of court.

In pursuance of the annexed rule of court, to us directed, we, E F and G H, in obedience thereto, having examined all matters in difference between the said parties, do award, that the sum of \$     is due to the said A B from the said C D. Witness our hands and seals, this     day of

E F. [L. s.]  
G H. [L. s.]

*3. Form of a submission to be made a rule of court, where no suit is pending.*

Whereas divers disputes and controversies have arisen, and are now depending, between A B and C D, now, for the ending and deciding thereof, it is hereby mutually argued by and between the said parties, that all matters in difference between them shall be referred and submitted to the arbitrament, final and, and determination of A A, B B, and C C, or any two of them, arbitrators indifferently elected by the said parties; provided the said arbitrators, or any two of them, do make and publish their award in writing, ready to be delivered to the said parties, or such of them as shall desire the same, on or before the      day of      next ensuing the date hereof: and it is hereby mutually agreed by and between the said parties, that this submission shall be made a rule of court. In witness whereof, the parties have hereto set their hands, this      day of

Test,

A B.  
C D.

*4. Arbitration Bond.*

SOUTH-CAROLINA, } Know all men by these presents, that I,  
district. } A B, of      am held and firmly bound unto C D, of      in the sum of \$      to be paid to the said C D, or his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, and dated this      day of      in the year of our Lord

*5. Condition to stand to the award of two arbitrators, and an umpire appointed.*

The condition of the above obligation is such, that if the above bound A B, his heirs, executors, and administrators, and each and every of them, shall, on his and their part, well and truly stand to, perform, observe and keep the award, order, arbitrament and determination of A A, and B B, of      arbitrators indifferently named and chosen, as well for, and on the part of, the above bound A B, as of the above named C D, to arbitrate, award, and determine of, and concerning, all, and all manner of actions, causes of action, suits, and demands whatsoever, both in law and equity, which, at any time, or times, heretofore, have been had, commenced, prosecuted, or depending, between the said parties; provided the said award be made in writing, ready to be delivered to the said parties, on, or before, the      day of      next; or, if the said arbitrators should not make such their award of, and concerning the premises,

Within the time limited, as aforesaid, then, if the said A B, his heirs, executors, and administrators, on his and their part, shall well and truly stand to, perform, fulfil, and keep the award, determination, and umpirage of C C, indifferently named and chosen between the said parties for umpire; (if the umpire is not named, say, of such person as the arbitrators shall indifferently choose for umpire, in and concerning the premises) so as the said umpire do make, and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties, on, or before, the      day of      next ensuing, this obligation 'll be null and void, or else to remain in full force and virtue.      A B, [L. s.]

Sealed and delivered, &c.

**6. Condition to stand to the award of three arbitrators, or any two of them.**

The condition of the above obligation is such, that, if the above bound A B, his heirs, executors, and administrators, on his, and their part, shall, and do well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitration, end, and determination of A A, B B, and C C, or any two of them, arbitrators indifferently named and elected, as well by, and on the part and behalf of the said A B, as by and on the part of the above named C D, to arbitrate, award, order, judge and determine, of, and concerning all, and all manner of, actions, and causes of action, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, quarrels, contrivancies, trespasses, damages, and demands whatsoever, at any time heretofore had, made, moved, brought, commanded, sued, prosecuted, done, suffered, committed, or depending, by, or between, the said parties, so as the award of the said arbitrators be made and set down in writing, under the hands and seals of them, or of any two of them, ready to be delivered to the said parties in difference, on, or before, the      day of      now next ensuing, then this obligation to be null and void. (If the parties are disposed to make their submission a rule of court, then add, and the above bound A B, doth agree and desire, that this his submission may be made a rule of court.)      A B, [L. s.]

Sealed and delivered in the presence of

**7. Form of an award in full.**

To all to whom these presents shall come.

Whereas there are several accounts depending, and divers controversies have arisen between A B, and C D, and for put-

## APPENDIX.

ting an end to the said differences, they, the said A B, and C D, by their several bonds, or obligations, bearing date the day of last past, are reciprocally bound in the penal sum of dollars, to stand to, abide, perform, and keep the award, order, and final determination of us, whose names are subscribed, so as the said award be made in writing, and ready to be delivered to the parties in difference, on, or before, the day of next ensuing, as by the said obligations, and the conditions thereof, will appear: Now know ye, that we, the said arbitrators, having taken upon us the burden of the said award, and having fully examined, and duly considered the allegations and proofs of both the said parties, do make and publish this one award between the said parties, in manner following: that is to say, we do award and order, that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, and depending between the said parties, in law, or equity, for any manner of cause whatsoever, touching the premises, to the day of the date hereof, shall cease; and be no further prosecuted; and that each of the said parties shall pay and bear his own costs and charges, in any wise relating to, or concerning, the premises: And we do also award and order, that the said shall deliver, or cause to be delivered, to the said at within the space of &c. And we do further award and order, that the said shall, on, or before pay, or cause to be paid, unto the said the sum of dollars. We do also award and order, &c. And lastly, we do award and order, that the said and on the payment of the said sum of dollars, &c. shall, in due form of law, execute, each to the other, or to the other's use, general releases, sufficient in the law, for the releasing of each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching, or concerning the premises, or any matter, or thing, thereto relating, from the beginning of the world until the day of last past (date of bonds.) In testimony wherof, we have hereunto set our hands and seals, this day of in the year of our Lord

A A, [L. s.]  
B B, [L. s.]

## 8. Form of an Umpirage.

(Recite the arbitration bonds, as in the award above.) Now know ye, that I, E E, umpire, indifferently chosen by having deliberately heard and understood the griefs, allegations, and proofs, of both the said parties, and willing, as much as in me lieth, to set the said parties at unity and good accord, do, by these presents, arbitrate, judge, order, decree and award, as followeth: that is to say, &c. E E, [L. s.]

## BAIL.

*Recognizance. (See title *Affrayers*, 2.)*

**Form of a bail piece usually given to the bail, by the magistrate, before whom he enters into the recognizance.**

— District.

A B, of      in the said district, is delivered to bail, on a cepte corporo, unto B C, of      the      day of      in the year of our Lord

J W, J. P.

## BASTARDS.

1. *Examination of the matter of a bastard child.*

— District.

The examination of A M, of      in the district aforesaid, single woman, taken upon oath, before me, C D, one of the justices assighed to keep the peace in, and for, the district aforesaid, this      day of      in the year      who saith, that, on the      day of      now last past, at      in the said district, she, the said A M, was delivered of a (male, or female,) bastard child; and that the said basfard child is likely to become chargeable to the said district, and that A F, of      in the district of weaver, did get her wth child of the said bastard child.

Take and signed the day and year      A M.  
above written, before me,

C D.

2. *A warrant to bring the matter of a bastard child, before a justice of the peace, to be examined thereupon.*

— District.

To A B, constable of the said district.

Whereas, complaint has been made unto me, this      day of      in the year      on oath, by J F, of      in the district aforesaid, that A M, of      in the said district, was lately delivered of a bastard child, which is likely to become chargeable to the said district, these are therefore, strictly to command you, that you do bring the said A M, before me, at      on the      day of      at      o'clock in the morning, to be examined touching the premises; and that you do likewise give notice to J F, and the

## APPENDIX.

several persons, whose names are hereunder written, that he, and they, and every of them, are required to appear also, at the same time and place, to testify, severally, their knowledge touching the premises; to the end, that upon examination of the said matter, and the circumstances thereof, such order may be made therein, as to justice doth appertain. Hereof fail not, as you will answer at your peril.

C D. [L. s.]

*S. A warrant to apprehend the reputed father.*

— District.

To A B, constable of the said district.

Whereas A M, of      in the district aforesaid, single woman, hath, by her examination, taken in writing, upon oath, before me, declared, that on the      day of      now last past, at      in the said district, she, the said A M, was delivered of a (male, or female,) bastard child; and that the said bastard child is likely to become chargeable to the said district; and hath charged J F, of      in the said district, weaver, with having gotten her with child, of the said bastard child: I do, therefore, hereby command you, immediately to apprehend the said J F, and to bring him before me, or some other justice of the peace for the said district, to give security for his appearance at the next general sessions of the peace, to be holden for the district aforesaid, then and there to abide and perform such order, or orders, as shall be made in pursuance of an act of assembly, entitled "an act, to provide for the maintenance of illegitimate children, and for other purposes therein mentioned."

Given under my hand and seal this      day of      in the year of our Lord

C D. [L. s.]

*4. Commitment of the reputed father.*

— District.

To A B, constable of the said district.

Whereas A M, of      in the district aforesaid, single woman, in her examination, taken in writing, and upon oath, the      day of      last past, before me, hath declared that, on the      day of      now last past, at      in the said district, she, the said A M, was delivered of a (male, or female,) bastard child; and that the said child is likely to become chargeable to the said district; and hath charged I F, of      weaver, with having gotten her with child, of the said bastard child: And whereas, the said I F, being now personally present before me, hath re-

sesed to enter into a recognizance, with sufficient security, for his appearance at the next general sessions of the peace, to be holden for the district aforesaid, and to abide and perform such order, or orders, as shall then and there be made, in pursuance of an act of assembly, entitled "an act, to provide for the maintenance of illegitimate children, and for other purposes therein mentioned;" these are therefore to command you, the said constable, to take, and carry the said I F, to the common gaol of the said district, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the keeper of the said gaol, to receive the said I F into your gaol and custody, and him there safely keep, until he shall be thence delivered according to law.

Given under my hand and seal, this      day of

C D. [L. s.]

*5. Recognizance for the reputed father to appear at the general sessions.*

State of S. Carolina. }  
District, }

\* Be it remembered, &c. (in the common form.)

The condition.

Whereas A M, of      single woman, hath in, and by her examination, taken in writing, and upon oath, before me, C D, one of the justices appointed to keep the peace, in, and for, the district aforesaid, declared that she, the said A M, on the day of      now last past, at      in the district aforesaid, was delivered of a (male, or female) bastard child, and that the said bastard child is likely to become chargeable to the said district, and hath charged the above bound I F, with having gotten her with child of the said bastard child: Now the condition of this recognizance is such, that if the above bound I F, shall and do appear at the next general sessions of the peace, to be holden for the said district, and shall abide and perform such order, or orders, as shall be made in pursuance of an act of assembly, entitled "an act, to provide for the maintenance of illegitimate children, and for other purposes therein mentioned;" then this recognizance to be void, or else to remain in full force.

I F, [L. s.]

Acknowledged before me, the day and  
year first above written.      C D.

*6. Commitment of the matter of a bastard-child, upon her refusing to declare, on oath, who is the father.*

— District.

To A B, constable of the said district.

Whereas A M, of      in the district aforesaid, single woman, who has been brought before me, one of the justices appointed to keep the peace, in, and for, the said district, upon a charge of being the mother of a bastard child, which is likely to become chargeable to the said district, hath refused to declare, on oath, who is the father thereof; these are therefore to require you, the said constable, to take and carry the said A M, to the common gaol of the said district, and deliver her to the keeper thereof, together with this warrant; and I do hereby command you, the keeper of the said gaol, to receive the said A M, into your gaol and custody, and her there safely keep, until she shall be thence delivered by due course of law.

Given under my hand and seal, this      day of

C D, [L. s.]

*7. Bond to indemnify the district.*

State of South-Carolina, }  
District. }

Know all men by these presents, that we, I F, weaver, and G H, tanner, both of the district and state aforesaid, are held and firmly bound unto H I, J K, and L M, commissioners of the poor, for the said district, in the sum of      dollars, to be paid to the said commissioners, and their successors, to which payment well and truly to be made, we bind ourselves, jointly and severally, and each and every of our heirs, executors, and administrators, firmly, by these presents: sealed with our seals, and dated the      day of      in the year of our Lord

The condition of the above obligation is such, that, whereas A M, of      single woman, hath, in, and by, her examination, taken in writing, and upon oath, before C D, one of the justices of the peace, for the said district, declared that, on the day of      last past, at      in the said district, she, the said A M, was delivered of a (male, or female,) bastard child, and that the said child is likely to become chargeable to the district; and hath charged the above bound J F, with having gotten her with child, of the said bastard child: Now, therefore, if the said I F and G H, or either of them, their, or either of their heirs, executors, or administrators, do, from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as

well the above named commissioners of the poor, and their successors, for the time being, as also all and singular the other inhabitants of the said district, of, and from, all manner of costs, taxes, rates, assessments, and charges, whatsoever, for, or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching and concerning the same, then this obligation to be void, otherwise to remain in full force.

I F, [L. s.]

G H, [L. s.]

Signed, sealed, and delivered

in presence of

A K,

B K.

**8. Recognizance to be entered into by the reputed father of a bastard child.**

Be it remembered, that on the      day of      in the year of our Lord      I F and G H, both of      district, personally came before me, C D, a justice of the peace, for the said district, and acknowledged themselves to owe to the state of South-Carolina, the sum of two hundred and fifty-seven dollars and sixteen cents; to be levied of their respective goods and chattels, lands and tenements, to the use of the commissioners of the poor of the aforesaid district, if default is made in performance of the condition under written.

The condition of this recognizance is such, that whereas the above bound I F, upon due examination and proof, hath been adjudged to be the reputed father of a male (or female) bastard child, of which A M, of      single woman, at      in the said district, was lately delivered; now, therefore, if the said I F, shall pay, or cause to be paid, to the commissioners of the poor, of the said district, on the      day of      next, the sum of twenty-one dollars and forty three cents, and a like sum on the same day of      in every year thereafter, until the said child shall arrive at the age of twelve years, for the sustenance and maintenance of the said child; (if more than one child at a birth, say forty-two dollars and eighty-six cents,) and shall also, from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, all and singular the inhabitants of the said district, of, and from, all manner of costs, taxes, rates, assessments, and charges, whatsoever, for, or by reason, of the birth, maintenance, and education of the said child, then this obligation to be void.

I F, [L. s.]

G H, [L. s.]

Taken and acknowledged the day and  
year first above written, before me,

C D.

## APPENDIX.

## BIGAMY.

## 1. Form of a Warrant.

— District.

Whereas A B, of      hath this day given information, upon oath, to me, J W, a justice of the peace, for the said district, that he has just cause to suspect, and does verily believe, that A B, of      on, or about the      day of      in the said district, did feloniously marry and take to wife, one C P, spinster, and to the said C P was then and there married, the said A B, having a former wife then living; These are therefore, in the name of the state, to require you to apprehend the said A B, and bring him before me, or some other justice of the peace, for this district, to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, at      in the district aforesaid, this      day of      in the year of our Lord

J. W. [L. S.]

To ————— constable.

## 2. Mittimus.

— District.

To the sheriff (or any constable) of the said district, and to the keeper of the gaol of the said district.

These are to command you, the said sheriff, (or constable,) in the name of the state, to carry and deliver into the custody of the keeper of said gaol, the body of A B, of      charged before me with bigamy; and you the said gaoler are hereby required to receive the said A B, into your gaol and custody, and him there safely to keep 'till he shall thence be discharged in due course of law. Given under my hand and seal, this      day of

J. W. [L. S.]

(For recognizance, see Affrayers 2—varying the condition according to circumstances.)

## BUGGERY.

## 1. Warrant to apprehend a Buggeron.

— District.

To A B, constable of the said district.

Whereas I C, of      hath this day made oath before me, a justice of the peace for the said district, and thereby charged

A B, of      with having, on the      day of      last past, had certain knowledge of A T, of      labourer: These are therefore, in the name of the state, to command you to apprehend the said A B, and to bring him before me, or some other justice of the peace, to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this      day of      in the year of our Lord      J. W. [L. s.]

If for beastiality, say, "of a certain mare, cow, &c."

~~Postscriptum.~~

— District.

To      constable of the said district; and to the keeper of the gaol thereof.

WHEREAS, A B, of      hath been charged upon oath, before me, with having lately been guilty of the detestable crime of buggery, and, upon his examination before me, having said nothing material to clear himself of the said charge, these are therefore, to require you, the said constable, to convey the said A. B. to the common gaol of the district aforesaid, and to deliver him to the keeper thereof: And I do hereby command you, the said keeper, to receive the body of the said A B, into your gaol and custody, and him safely keep, until he shall be thence discharged by due course of law.

Given under my hand and seal, this      day of      in the year of our Lord      J. W. [L. s.]

For recognizance, see Affray 2.—varying the condition according to circumstances.

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## BURGLARY.

### 1. *Warrant to apprehend.*

— District.

To A B, constable.

WHEREAS C. D. of the district of      aforesaid, merchant, hath this day made information and complaint, upon oath, before me, J W, a justice of the peace for the said district, that, on the      day of      in the night, the dwelling house of him, the said C D, in the district aforesaid, was feloniously and burglariously broken open, and one gold watch, of the value of      dollars, &c.

## APPENDIX.

of the goods and chattels of him, the said C D, feloniously and burglariously stolen, taken, and carried away from thence, and that he has just cause to suspect, and does suspect, that A O, of the said felony and burglary did commit: These are therefore, in the name of the state, to command and require you, immediately, to apprehend the said A O, and bring him before me, or some other justice of the peace, for this district, to answer to the said charge, and be further dealt with according to law. Given under my hand and seal this day of in the year of our Lord

J. W. [L. S.]

2. *Mittimus.*

— District.

To A B, constable, and the keeper of the gaol of the said district.

These are to command you, the said constable, in the name of the state, to convey, and deliver into the custody of the keeper of the said gaol, the body of A O, of taken and brought before me upon a charge of felony and burglary, in breaking and entering the dwelling house, (or if any other house, describe the kind particularly) of C D, of of the district aforesaid, merchant, on the day of in the night time, and feloniously taking and carrying away from thence sundry articles of the goods and chattles of the said C D: And you, the keeper of the said gaol, are hereby required to receive, into your gaol and custody, the body of the said A O, and him there safely keep, until he shall be discharged by due course of law. Given under my hand and seal, this day of in the year of our Lord

J. W. [L. S.]

## BURNING.

*Warrant for burning a house.*

— District.

To A. B. constable.

WHEREAS A W, of hath this day made complaint upon oath, to me, J W, one of the justice of the peace for the aforesaid district, that, on the day of a house, viz: (describe it) belonging to him, the said A W, and in his possession, was wilfully and maliciously set on fire, and burnt; and that he has just cause to suspect that A O, of did feloniously, wilfully,

and maliciously burn the said house: These are therefore, in the name of the state, to require you, the said A B, immediately to apprehend the said A O, and bring him before me, or some other justice of the peace for this district, to answer to the said charge, and be further dealt with according to law.

Given under my hand and seal this      day of      in the year of our Lord      J. W. [L. s.]

(For Mittimus, see Burglary 2—varying the description of the offence to suit the case.)

### CASES, SMALL AND MEAN.

#### 1. Form of a summons for debt.

— District.

To any lawful constable of the said district.

Complaint being made unto me by J C, of the said district, that E D, of the same district, is indebted to him, the said J C, in the sum of      dollars, (or note, &c.) and that the said E D, refuseth to pay the same: These are therefore, to require you to summon the said E D, to appear before me, or some other justice of the peace for the said district, to answer the said complaint. Given under my hand and seal, this      day of

J. P. [L. s.]

#### 2. Subpoena for Witness.

— District.

To any lawful constable.

Whereas a cause is now pending, and to be tried at      on the      day of      next, between J C, plaintiff, and E D, defendant: These are, therefore, to require you to summon G H, to be and appear at the time and place aforesaid, to testify, according to his knowledge, concerning the matters in dispute between the said parties, that justice may be done therein.

Given under my hand and seal, this      day of

J. P. [L. s.]

#### 3. Judgment.

— District.

I C, against E D, in debt.

The summons in this case being returned executed, and the parties having appeared before me, and submitted their several

statements, allegations, and proofs, it is considered that the said J C, do recover against the said E D, the sum of      dollars, with the costs of this suit.                                                    J. P.

(Date.)

If the defendant fails to appear, say after "executed" and the defendant failing to appear, the plaintiff proved his debt according to law, and it is, thereupon, considered, &c. ——.

If the plaintiff should be nonsuited, after "before me," say, and the plaintiff being nonsuited, it is considered, that the defendant do recover against the said plaintiff      dollars, for his costs by him expended in defending this action.

*4. Judgment for defendant, where he proves a balance due from plaintiff.*

— District.

E D, at the suit of I C, in debt.

The summons in this case being returned executed, the parties appeared before me, and submitted their several statements, allegations, and proofs; and it appearing that the said plaintiff is indebted to the said defendant in a balance of      dollars, it is therefore considered, that the said defendant do recover against the said plaintiff, the said sum of      dollars, together with costs, according to the acts of assembly, in that case made and provided.

(Date.)

J. P.

*5. Execution for plaintiff.*

— District.

To A B, constable of the said district.

These are to charge and command you, that, of the goods and chattels of E D, of the district aforesaid, you levy the sum of      which hath been, by me, adjudged to I C, of said district, for a debt; as also, the sum of      for his costs and charges expended in the recovery thereof; whereof the said E D, is convict. Given under my hand and seal, the      day of

J. P. [L.S.]

*6. Execution for defendant, on nonsuit.*

— District.

To A B, constable, &c.

These are to charge and command you, that of the goods and chattels of I C, of the district aforesaid, planter, you levy the sum of      dollars, which hath been by me adjudged to E D, of

the said district, shoemaker, for his costs in defending an action  
for debt; brought against him by the said I C, in which action  
the said I C hath been nonsuited. Given under my hand and  
seal, this day of J. P. [L. S.]

7. Execution for defendant, on judgment for balance in his favor.

— District

To A B, constable.

These are to charge, and command you, that, of the goods and chattels of I C, of the district aforesaid, shoemaker, you levy the sum of dollars, which hath been, by me, adjudged to E D, of the said district, planter, for a balance due the said E D, from the said I C; and also, the sum of dollars, for his, the said E D's costs, in defending an action of debt, brought against him by the said I C, according to the act of assembly in that case made and provided.

Given under my hand and seal, the day of in the year  
of our Lord J. P. [L. s.]

(For appeal, see title Judgment.)

CHEAT.

*Warrant of two Justices (Q. U.) to apprehend a Cheat.*

— District.

To A B, constable of the said district.

WHEREAS complaint hath been made unto us, whose names and seals are hereunto set, two justices of the peace for the said district, (one of whom, to wit: J Q, being of the quorum) upon the oath of C I, that, on the      day of      A O, of      did, by a false privy token, (or counterfeit letter,) that is to say, (here particularize the offence) falsely and deceitfully obtain, and get into his hands and possession, (here mention the things) from the said C I, contrary to the statute in that case made: These are therefore, to command you forthwith to bring the said A O, before us, at      on the      day of      to answer to the said complaint, and be farther dealt with according to law.

**APPENDIX.****2. Mittimus.****— District.**

**To A B, constable, and to the keeper of the gaol of the said district.**

Whereas A O, of      in the district of      hath been charged upon oath, before us, with having falsely, and deceitfully obtained, and got into his hands and possession (here mention the things) from C I, of      by means of a false privy token, contrary to the statute in that case made and provided: These are, therefore, to command you, the said A B, forthwith to convey and deliver the said A O, to the keeper of the said gaol; and you, the said keeper, are hereby required to receive the said A O, into your gaol and custody, and him there safely keep, until he shall be thence delivered by due course of law.

Given under our hands and seals, the      day of      &c.

J. Q. [L. s.]

J. P. [L. s.]

**Recognizance.****— District.**

**Be it remembered, &c.—See Affray 2.**

The condition of this recognizance is such, that if the above-bound A O, shall personally appear at the next court of general sessions of the peace, to be holden at      on the      day of      for the district of      aforesaid, to answer to such matters as shall then and there be objected against him, upon a charge of having falsely and deceitfully obtained and got into his possession (mention the things) from C I, of      by means of a false privy token, contrary to the statute in that case made and provided; and do not depart therefrom without leave of the court, then this recognizance to be void.

A. O. [L. s.]

Taken and acknowledged, the day and year first above written, before us

J. Q.

J. P.

**CONVICTION BEFORE A JUSTICE OF THE PEACE.****General Form.****— District.**

Be it remembered, that on the      day of      in the year      at      in the district aforesaid, A C, of      cometh before J P

One of the justices assigned to keep the peace, in and for the said district, and also, to hear and determine divers trespasses and other misdemeanors in the said district committed, and giveth me, the said justice, to understand and be informed, that one A B, of      in the said district, on the      day of      last past, at      in the said district, did, (here set forth the fact in the words of the statute, as nearly as may be) against the form of the statute in such case made and provided; and, afterwards, upon the aforesaid      day of      in the year aforesaid, at      in the district aforesaid, he, the said A B, after having duly summoned in this behalf, before me, the justice aforesaid, appeareth, and is present in order to make his defence against the said charge contained in the said information; and having heard the same, he, the said A B, is asked by me, the said justice, if he can say any thing for himself, why he, the said A B, should not be convicted of the premises above charged in form aforesaid; whereupon he, the said A B pleadeth, that he is not guilty of the said offence. Nevertheless, on the      day of      aforesaid, at      in the district aforesaid, one credible witness, to wit: A W, of      yeoman, cometh before me, the justice aforesaid, and upon his oath, on the holy gospels, to him then and there by me the said justice administered, deposeth, affirmeth and saith, that the aforesaid A B, on the      day of      aforesaid, in the year aforesaid, at      in the district aforesaid, did (here again set forth the fact, or so much thereof as is sufficient to convict the offender;) and thereupon, the aforesaid A B, the      day of      aforesaid, in the year aforesaid, before me, the justice aforesaid, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted; and, for his offence aforesaid, hath forfeited the sum of      dollars, to be distributed, as the statute aforesaid doth direct.

In witness whereof I, the said justice, to this present record of conviction have set my hand and seal, the day and year first above written. J. P. [L. s.]

If he confesses the fact, then say, and because the said A B, hath nothing to say, nor can say any thing in his own defence, touching and concerning the premises, but doth of his own accord, freely and voluntarily acknowledge, and confess, all and singular the said premises to be true, in manner and form, as the same are charged upon him in the said information, and because all and singular the premises being heard and fully understood by me, the said justice, it manifestly appears to me, &c. or, if the party hath been summoned, and doth not appear, then say, whereupon, on the said      day of      in the year aforesaid, at      aforesaid, he, the said A B, was duly summoned, in this behalf, to appear before me, in order to make his defence against the said charge, contained in the said infor-

## APPENDIX.

mation; but the said A B doth neglect to appear before me, and doth not appear, nor make any defence against the said charge: Therefore, I, the said justice, on the said      day of      in the year aforesaid, at      aforesaid, do proceed to examine into the truth of the said complaint; and A W, of      a credible witness, cometh before me, the said justice, and upon his oath, &c.

## CORONER.

1. *Summons for a Jury.*

**State of South-Carolina,** }  
district. }

To any constable of the said district.

These are to require you, immediately upon the receipt hereof, to summon and warn fourteen good and lawful men of the said district, to be and appear before me, the coroner of the said district, at      within the said district, betwixt the hours of      and      of the clock, in the      day of      then and there to inquire, upon view of the body of a certain person there lying dead, how, and in what manner, he came to his death. Fail not herein, as you will answer at your peril.

Given under my hand and seal, at      the      day of      in the year of our Lord

A. C. coroner of      district, [L.S.]

2. *Oath of the foreman.*

You shall diligently inquire, and true presentment make, on behalf of the state of South-Carolina, how, and in what manner, A D, here lying dead, came to his death; and you shall deliver up to me a true verdict thereof, according to such evidence, as shall be given you, and according to your knowledge: So help you God.

3. *Oath of the rest of the Jury.*

Such oath as I M, the foreman of this inquest, hath taken, you, and each of you, shall well and truly observe and keep on your parts: So help you God.

4. *Oath of a Witness.*

The evidence which you shall give to this inquest, on behalf of the state, touching the death of A D, shall be the truth, the whole truth, and nothing but the truth: So help you God.

5. *Inquisition of Murder.*

STATE OF SOUTH CAROLINA, }  
district. }

An inquisition indented, taken at      in the district of aforesaid, on the      day of      in the year      before me A C, coroner for the said district, upon view of the body of A D, late of      then and there lying dead, upon the oaths of A, B, C, D, E, &c. (not less than twelve) good and lawful men of the said district, who being charged and sworn to inquire for the state, when, where, how and after what manner, the said A D, came to his death; do say upon their oaths, that one A B, gentleman, late of      not having God before his eyes, but being moved and seduced by the instigation of the devil, on the      day of      in the year      with force and arms at      in the district aforesaid, in and upon the said A D, then and there being in the peace of God, and of the said state, feloniously, voluntarily and of his own malice aforesought, made an assault; and that the aforesaid A B, then and there, with a certain sword made of iron and steel, of the value of      dolls, which he the said A B then and there held in his right hand, the aforesaid A D, in and upon the left part of the belly of the said A D, a little above the navel of the said A D, then and there violently, feloniously, and of his malice aforesought, struck and pierced, and gave to the said A D, then and there, with the sword aforesaid, in and upon the aforesaid left part of the belly, a little above the navel of the said A D, one mortal wound, of the breadth of half an inch, and of the depth of three inches; of which said mortal wound, the aforesaid A D, then and there instantly died; and so the said A B, then and there feloniously killed and murdered the said A D, against the peace of this state. And the said jurors further say, upon their oaths aforesaid, that I O, of      &c. and T O, of      &c. were feloniously present with drawn swords, at the time of the felony and murder aforesaid, in form aforesaid committed, then and there comforting, abetting and aiding the said A O, to do and commit the felony and murder aforesaid, in manner aforesaid, against the peace and dignity of this state.

Where one hangs himself, thus: Not having God before his eyes, but being moved and seduced by the instigation of the devil, at      aforesaid, in a certain wood standing and being, the said A D, being then and there alone, with a certain hempen cord of the value of      dolls, which he then and there had, and held in his hands, and one end thereof he then and there put about his neck, and the other end thereof he tied about a bough

## APPENDIX.

of a certain tree, and himself then and there, with the cord aforesaid, voluntarily and feloniously, and of his malice aforethought, hanged and suffocated ; and so the jurors aforesaid, upon their oaths aforesaid, say, that the said A D, then and there in manner and form aforesaid, as a felon of himself, feloniously, voluntarily, and of his malice aforethought, himself killed, strangled and murdered against the peace of this state.

Where one drowns himself, thus : Do say, that the said A D, not having God before his eyes, but being seduced and moved by the instigation of the devil, at aforesaid, then and there being alone, in a common river there called himself voluntarily and feloniously drowned : and so the jurors aforesaid, upon their oaths aforesaid, say, that the aforesaid A D, in manner and form aforesaid, then and there himself voluntarily and feloniously, as a felon of himself, killed and murdered against the peace of this state.

Where one cuts his own throat, thus : By the instigation of the devil, at aforesaid, in and upon himself, then and there being in the peace of God, and of the said state, feloniously, voluntarily, and of his malice aforethought, made an assault; and that the aforesaid A D, then and there, with a certain razor, of the value of dolls, which he, the said A D, then and there held in his right hand, himself, upon his throat, then and there feloniously, voluntarily and of his malice aforethought, did strike, and give to himself, with the razor aforesaid, upon his throat aforesaid, one mortal wound, of the breadth of inches, and of the depth of ; of which said mortal wound, the said A D, at aforesaid, languished, and languishing lived from the said day of in the year aforesaid, to the

day of ; and that the said A D, on the day of aforesaid, in the year aforesaid, in the district aforesaid, of that mortal wound died : And so the jurors aforesaid, upon their oaths aforesaid, say, that the said A D, then and there, in manner and form aforesaid, himself, voluntarily and feloniously, as a felon of himself, killed and murdered, against the peace of this state.

Where one dies in gaol thus : Who say, upon their oaths, that the aforesaid A D, on the day of the taking of this inquisition, being a prisoner in the gaol of in the district aforesaid, then and there died of the visitation of God ; and then and there, in manner and form aforesaid, came to his death, and not otherwise.

Where one dies a natural death, thus : That the said A D, on the day of in the year at in the district aforesaid, was found dead ; that he had no marks of violence upon him, and died by the visitation of God, in a natural way, and not otherwise.

Where the murder is unknown, thus : That a certain person unknown, did kill and murder the said A D, &c. and add, and the said jurors upon their oaths aforesaid, further say, that the said person unknown, after he had committed the said felony and murder, did flee away, against the peace and dignity of this state.

Where one kills another in his own defence, thus : Upon their oaths, say, that A M, late of      at      aforesaid, on the day of      in the year      in the peace of God and of the state then being, A K, late of      in the district of      at the house of      in the afternoon of the same day, did come, and upon him, the said A M, then and there, of his malice aforesought, did make an assault, and him the said A M, did then and there endeavour to beat and kill, by continuing the assault aforesaid, from the house of one W H, in      aforesaid, to a certain place called      in the district aforesaid, and the said A M, seeing, that the said A K, was so maliciously disposed, to a certain      in the said place, did flee, and from thence for fear of death, could not escape, and so the said A M, himself, in preservation of his life, against the said A K, continued to defend, and in his own defence, him the said A K, upon the right part of the breast of him the said A K, with a certain      of the value of      dollars, which he, the said A M, then and there held in his right hand, did strike, then and there giving to the said A K, one mortal wound of the breadth of      inches, and of the depth of      inches ; of which said mortal wound, the said A K, at      aforesaid, in the district aforesaid, languished, and languishing lived, from the said      day of      to the day of      then next ensuing ; and that the said A K, on the said      day of      in the year      aforesaid, in the district aforesaid, of that mortal wound died ; and so the jurors aforesaid, upon their oaths aforesaid, say that the said A M, in manner and form aforesaid, the said A K, did then and there kill in his own defence.

Where the death was occasioned by chance medley, thus : That A B, late of the district aforesaid, on the      day of      in the year      aforesaid, at      in the said district, a certain gun, of the value of      then and there charged with gunpowder and a leaden bullet, which he the said A B, then and there had and held in both his hands, then and there casually, and by misfortune, and against the will of him the said A B, discharged and shot off ; and that the said A B, with the leaden bullet aforesaid, then and there discharged and shot out of the said gun, him the said C D, in and upon the left breast of him the said C D, then and there with the bullet aforesaid, inflicted in and upon the left breast of him the said C D, one mortal wound, of the breadth of one inch, and of the depth of three inches ; etc

## APPENDIX.

which said mortal wound, he, the said C D, then and there instantly died ; and so the jurors aforesaid, upon their oaths aforesaid, do say, that the said A B, him the said C D, in manner and by the means aforesaid, causally, and by misfortune, and against the will of him the said A B, did kill : In testimony whereof, as well I the said coroner, as the jurors aforesaid, to this inquisition have interchangeably put our hands and seals, the day and year first above written.

*Jurors.*

|      |         |
|------|---------|
| A B, | [L. s.] |
| C D, | [L. s.] |
| E F, | [L. s.] |
| G H, | [L. s.] |
| I J, | [L. s.] |
| K L, | [L. s.] |
| M N, | [L. s.] |
| O P, | [L. s.] |
| Q R, | [L. s.] |
| S T, | [L. s.] |
| U V, | [L. s.] |
| W X, | [L. s.] |

**A C, Coroner.**

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## DAMS IN RICE FIELDS.

1. *Summons to three Freeholders.*

— District.

Whereas information hath been this day made before me I P, a justice of the peace for the district aforesaid, upon the oath of A T, of      planter, that A B. of the district of      having kept water during the winter, upon grounds upon which rice is to be planted the present spring, has neglected to open the dams, which kept up the water, in a sufficient manner for letting off of the same, to the damage of the said A T, : these are therefore, to command you to summon A B, B C, and C D, disinterested persons of the neighbourhood, and residents, to be and appear at      in the district aforesaid, on the      day of      instant, at      o'clock in the morning, to view the obstructions complained of, and to determine the matter in dispute between the said A T, and A B, and to return the same to me under their hands, and upon their oaths. Hereof fail not at your peril.

Given under my hand and seal at      in the district aforesaid, this      day of      in the year      J. P. [L. s.]

## 2. Notice to the person complained of.

**Mr. A B,**

**SIR**—Information having been given to me on oath, by A T, that you have neglected to open your dam, on or before the tenth day of March instant, agreeably to the act of assembly in that case made and provided; and the said A T, having applied for a warrant of survey on the said dam, these are therefore, to notify to you, that A B, B C, and C D, are summoned to view the said dam, or obstructions, on the      day of      at o'clock in the morning.

Given under my hand this      day of      in the year

J. P.

## 3. Return of the Freeholders.

**— District.**

We A B, B C, and C D, freeholders of the district aforesaid, by virtue of a warrant under the hand seal of J P, a justice of the peace for the said district, dated the      day of      in the year      went as by the said warrant directed, to      in the said district, and there being first duly sworn, having viewed the said dam, or obstruction, belonging to the said A B, which is complained of by A T, were of opinion, that the said dam or obstruction, prevents the said A T, from planting his crop of rice in proper time, and therefore have caused the said dam to be cut and opened.

Given under our hands this      day of

A. B.

B. C.

C. D.

## 4. Form of an execution for the cost.

**— District.****To any lawful Constable.**

These are to charge and command you, that of the goods and chattels of A O, of the district aforesaid, planter, you levy the sum of      dollars, for his costs for a warrant of survey obtained by A T, on the      day of      last past, for the purpose of viewing the dam of him, the said A O, which he, the said A O, hath neglected to open agreeably to the directions of the act of assembly in that case made and provided, as appears by the return of A B, B C, and C D, freeholders, appointed for that purpose. Given under my hand and seal this      day of      in the year of our Lord

J P, [L. s.]

## APPENDIX.

## DISTRESS FOR RENT.

1. *Warrant.*

To Mr. A B.

Distress the goods and chattels of C D, (the tenant) in the house he now dwells in, (or on the premises in his possession) situate in      in the district of      dollars, being one year's rent (or as the case is) due to me for the same, on the day of      last past; (or any other) and for so doing, this shall be your sufficient warrant and authority.

Given under my hand this      day of

L. L.

2. *Another Form.*

South-Carolina, }  
district. }

Know all men by these presents, that I, A B, do hereby authorize and appoint B C, to take any person, or persons, to his assistance, and enter into the house (or plantation) of C D, and there to make distress of all such goods and chattels as are upon the premises, for      dollars, for one quarter's rent, (or as the case is) due to me, from the said C D, on      last past; and after the said goods are so distrained, if the said C D, doth not, within the time limited, by the statute for that purpose made, re-plevy the same, or pay the said rent; then, and in that case, I do hereby authorize you to cause the said goods to be appraised, sold, and applied, as by the said statute is directed; and for your so doing this shall be your warrant.

Witness my hand and seal, this      day of      in the year  
A. B. [L. s.]

3. *Inventory.*

An inventory of the several goods, that were distrained by me, whose name is underwritten, in the house, (or plantation) of      in      by an authority of      to me for that purpose given, for      dollars, for one quarter's (or one year's, &c.) rent, due on the      day of      which goods have been seized by me, this day of      instant, for the use of the said

In the cellar, —.

B. C.

In the lower rooms, —.

In the upper rooms, —.

4. *Notice.*

Mr. A. T.

Take notice, that, by the authority, and on the behalf of your landlord, A L, I have, this      day of      distrained the several

**goods and chattels, specified in the schedule annexed, in your houses, out-houses, and grounds, at      for      dollars, arrear of rent due to him, the said A L; and if you shall not pay the said rent, so due, and in arrear, as aforesaid, or replevy the said goods and chattels, I shall, after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the statute in that case made and provided. Given under my hand, the day and year first above written.**

B. C.

**A W, is a witness that a true copy hereof was this day delivered to the said A T, (or left at the chief mansion house of the said A T.)**

**5. Appraisers' oath.**

**You and each of you, shall value and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.**

**6. Form of Appraisement.**

**The appraisement may be in the form of the inventory, specifying the articles, and their respective valuations; and then add, appraised by us this      day of      in the year**

**A. P. }  
B. P. } Sworn Appraisers.**

**N. B. The person distraining must take care to keep a copy of the inventory, notice and appraisement.**

**7. Replevin Bond.**

**South-Carolina, }  
district. }**

**Know all men by these presents, that we A B, and C D, and G H, of      are held and firmly bound unto E F, constable, (or sheriff, who makes the distress) in the full and just sum of      dollars, to be paid to the said E F, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated this      day of      in the year      . The condition of the above obligation is such, that, whereas divers goods and chattels, of the said A B, have been distrained by the above named E F, to satisfy the sum of      dollars, due to A L, for arrears of rent, the costs of which distress amount to      dollars; which said goods and chattels have been restored to the said A B, upon his entering into this bond, together with the above named C**

## APPENDIX.

D and G H, as his securities; if, therefore, the said A B shall prosecute his action of replevin against the said A L, with effect, and without delay, and shall duly return the said goods, in case a return shall be awarded; and shall, also, in case the said goods shall not be sufficient to satisfy the said arrears of rent, or shall be elogned, if the said A B, shall make up and pay to the said A L, the full amount of rent distrained for, as aforesaid, and all costs that may be adjudged against him, the said A B, then the above obligation to be null and void, or else to remain in full force.

Signed, sealed, and delivered  
in the presence of

A. B. [L. s.]  
C. D. [L. s.]  
G. H. [L. s.]

## ESCAPE.

1. *Form of a warrant, where party escaping had been committed on an execution.*

**State of South-Carolina,** }  
district. }

To all sheriffs and constables within the state aforesaid.

Complaint being this day made to me, one of the justices assigned to keep the peace, in, and for, the said district, upon oath, by A B, of that C D, who was charged in execution, in the gaol of the said district, (or within the bounds of the gaol of the said district,) at the suit of E F, &c. (here insert the several executions) did, on, or about, the day of last past, escape out of the said gaol, (or prison bounds) and is now going at large: These are therefore, in the name of the state, to require you, and each of you, in your respective districts, cities, towns, and precincts, to make diligent search after the said C D, and him to retake and carry to the prison, where debtors are usually kept, in the district, where he shall be so re-taken, and deliver him to the keeper thereof, together with this warrant; and the keeper of the said gaol is hereby required to receive him, the said C D, and him there safely keep, until he shall be thence removed by lawful authority. And for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord

J. P. [L. s.]

(See title Escape, sec. vi.)

*2. Where the party had been confined on mesne process.*

**State of South-Carolina,** }  
district. }

To all sheriffs and constables within the said district.

Complaint being this day made to me, upon oath, by A B, of that C D, who was committed to the gaol of the said district, for want of bail, at the suit of E F, &c. (here recite the cause of action) did, on, or about, the day of last past, make his escape out of the said gaol, and is now going at large: These are therefore, &c. (as in the above form.)

*3. Warrant against a criminal.*

**State of South-Carolina,** }  
district. }

To all sheriffs and constables within the state aforesaid.

Whereas complaint hath been made to me, upon the oath of A B, of that A O, who was lately committed to the gaol of the said district, by warrant from J P, a justice of the peace for the said district, on suspicion of felony, did, on the day of last past, forcibly escape from the said gaol, and is now going at large: These are therefore, in the name of the state, to require you, and each of you, in your respective districts, cities, towns and precincts, to make diligent search for the said A O, and him when found, to seize, and re-take, and safely convey to the common gaol of the district, where he shall be so retaken, and deliver him to the keeper thereof, together with this warrant: and the keeper of the said gaol, is hereby required to receive him, the said A O, and him safely keep, until he shall be thence delivered by due course of law. And for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of

J. Q. [L. s.]

**ESTRAY.**

*1. Warrant to three proper persons of the vicinage to appraise an estray.*

— District.

To A B, B C, and C D.

Whereas E F, of the said district, hath this day given information, to me, a justice of the peace, for the said district, that

## APPENDIX.

he hath taken up an estray (here express the kind) found wandering about his plantation : These are, therefore, in the name of the state, to require you, being first duly sworn for that purpose, before me, or some other justice of the peace of this district, to view and appraise the said estray, and to certify the value thereof under your hands, together with a particular description of the kind, color, size, age, brands and marks, of the said estray ; which certificate so made, you are forthwith to return to me. Given under my hand this      day of

L. J.

2. *Oath to be administered to the Appraisers.*

You A B, B C, and C D, do swear, that you will faithfully, and to the best of your skill and judgment, view and appraise a certain estray (express the kind, whether horse, &c.) taken up by E F, of this district, and that you will certify the valuation thereof under your hands to me (or to J D, a justice of the peace for this district, if the warrant issued from him) together with a particular description of the kind, color, size, age, brands and marks of the same. So help you God.

3. *Certificate of the Appraisers, on the back of the Warrant, or on a piece of paper annexed to it.*

In pursuance of the within (or the above) warrant, to us directed, we have this day viewed an estray (express the kind, whether horse, &c.) shewn to us by E F, of this district, and do find the same to be (here describe the kind, color, size, age, brands and marks;) and we do appraise the said      at the sum of      dollars. Certified under our hands this      day of  
in the year

A. B.

B. C.

C. D.

Hogs, sheep, neat cattle, and goats to be appraised at the place where taken up.

## EXAMINATION.

1. *Examination of a Felon.*

State of South-Carolina, }  
District. }

The examination of A O, of      taken before me J Q, one of the justices of the peace for the said district, the      day of  
in the year

The said A B, being charged by A J, of      with the felonious stealing out of the house of the said A J, at      on the day of      , the following goods, to wit: of the value of dollars, upon his examination now taken before me, confesseth that (or denieth that, &c.)      J. Q.

*2. Information of a Witness.*

**State of South-Carolina,** }  
District. }

The information of A W, of      taken upon oath, before me, &c. (as above)

The said A W, being duly sworn, deposeth and saith, &c.,

*3. Recognizance to give Evidence.*

**State of South-Carolina,** }  
District. }

Be it remembered, that on the      day of      in the year A B, of      did come before me J P, one of the justices assigned to keep the peace in the said district, and did acknowledge himself to owe to the state of South-Carolina,      dollars, upon condition, that if he shall personally appear at the next court of general sessions of the peace, to be holden in and for the district aforesaid, then and there to give evidence in behalf of the said state, against A O, late of      who being arrested on suspicion of felony, is now committed to the gaol of the said district, then this recognizance to be void.      A B, [L. S.]

Acknowledged before me  
the      day of      J. P.

*4. Warrant for a Witness.*

**State of South-Carolina,** }  
District. }

To A B, constable,

Whereas oath hath been made before me, one of the justices of the peace for the district aforesaid, by A J, of      that he the said A J, was lately robbed at      ; and that he hath good cause to believe, that A W, of      is a material witness to prove by whom the said robbery was committed; these are therefore to require you to cause the said A J forthwith to come before me, to give such information and evidence, as he knoweth, con-

cerning the said offence, that such further proceeding may be had therein as to the law doth appertain. Given under my hand and seal, &c.

J. P. [L. S.]

*5. Warrant for Felony.*

— District.

To A. B., constable for the district aforesaid.

Whereas A. J. of      hath this day made information and complaint upon oath, before me J. P., one of the justices of the peace for the said district, that on the      day of      divers goods of him, the said A. J., to wit: were feloniously stolen, taken and carried away from the house of him the said A. J., at      in the said district; and that he hath just cause to suspect, and doth suspect, that A. O., late of      did feloniously steal, take, and carry away the same, (or otherwise as the case may be:) These are therefore to command you forthwith to apprehend the said A. O.; and to bring him before me, to answer unto the said information and complaint, and to be further dealt with according to law.

Given under my hand and seal, &c.

J. P. [L. S.]

FORCIBLE ENTRY AND DETAINER.

*1. Record of a forcible Detainer.*

— District.

Be it remembered, that on the      day of      in the year      at      in the district aforesaid, A. C., complained to me, one of the justices assigned to keep the peace in the said district, that C. D. of      into the messuage of him the said A. C., it being the mansion house of him the said A. C., situated within the district aforesaid, did enter, and him the said A. C., of the said messuage unlawfully ejected, expelled and moved, and the said messuage from him the said A. C., unlawfully, with strong hand, and armed power, doth yet hold and from him detain, against the force of the statute in such case made and provided: Whereupon, the said A. C., then required and prayed of me the remedy provided by statute; which complaint and prayer by me being heard, I personally went to the said messuage, and did then and there find the said C. D., the aforesaid messuage with force and arms unlawfully, with strong hand and armed power, detaining against the force of the statute in such case made and

**provided:** Whereupon the said C D, was arrested, and sent to the common gaol of the district aforesaid, by virtue of a mittimus duly issued by me for that purpose; concerning which, the premises aforesaid, I do make this my record.

In testimony whereof, I do hereunto set my hand and seal,  
the      day of      in the year of our Lord      J P, [L. s.]

2. *Mittimus.*

— District.

To the keeper of the common gaol of the said district.

Whereas, upon complaint made unto me, by A C, of I did this present day, go to the dwelling house of the said A C, and there did find C D, of forcibly, with strong hand and armed power, holding the said house, against the peace of this state, and against the force of the statute in that case made and provided: Therefore I send you herewith the body of the said C D; convicted of the said forcible holding, by my own view, testimony and record, commanding you to receive him into your said gaol, and there safely to keep him, till he shall be thence delivered by due course of law.

Given under, &c.

J P, [L. s.]

3. *Affidavit of complaint of a forcible entry.*

State of South-Carolina, }  
District. }

Before me J P, a justice of the peace for the district aforesaid, personally appeared A B, who being duly sworn, made oath, that on last, he was in peaceable and quiet possession of a certain house, called in which he rented from ; and that about o'clock on the same day he met B C, and C D, who both declared with a number of oaths and imprecations that they would then go and break open the said house, and take possession for themselves, which they did accordingly: that they broke open a door on which was an iron bolt fixed within, and a padlock on the outside, and left two white persons therein, who have kept possession ever since. A. B.

Sworn to before me, the      day of

J. P.

**APPENDIX.****GAMING.****1. Warrant.****— District.****To A B, Constable.**

Whereas, I have this day received information upon the oath of B C, that C D, hath been guilty of unlawful gaming, by playing at      in (describe the place) on the      day of      last past: These are therefore to require you, to cause the said C D, to come before me, or some other justice of the peace for this district, to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal this      day of      in the year      J P, [L. S.]

**2. Recognizance.****— District.**

Be it remembered, that on the      day of      C D, of      and A S, and B S, of      personally came before me J P, a justice of the peace for the said district, and acknowledged themselves to owe to the state of South Carolina, that is to say, the said C D, the sum of one thousand dollars, and the said A S, and B S, each, the sum of five hundred dollars; to be made and levied of their goods and chattels, lands and tenements respectively; one half thereof to the use of the state, and the other half to the use of the informer, if the said C D shall make default in the condition underwritten. Whereas the above bound C D, hath been this day brought before me, upon a charge of gaming, contrary to the acts of assembly in that case made and provided, and there appears sufficient cause to bind him over to take his trial before the court of sessions for the said offence, now the condition of the above recognizance is such, that if the said C D, shall and do personally appear at the next court of sessions, to be holden for the district aforesaid, then and there to answer to such matters as shall be objected against him concerning the said offence, then this recognizance to be void, or else to remain in full force.

Taken and acknowledged, this      day of      A S, [L. S.]  
in the year      before me      J. P.      B S, [L. S.]

**3. Mittimus.****— District.****To the keeper of the gaol of the said district.**

Whereas C D, hath been brought before me, a justice of the peace for the said district, upon a charge of unlawful gaming,

and hath failed to give security for his appearance at the next court of sessions, agreeably to the act of assembly in that case made and provided: These are therefore to require you to receive the body of the said C D, into your said gaol and custody, and him safely keep, till he shall be thence delivered by due course of law.

Given under my hand and seal this      day of

J P. [L. S.]

*4. Warrant to burn as E O Table, &c.*

— District.

To A B, constable of the said district.

Whereas, information hath been this day given to me, upon the oath of B C, of      that C D, of      doth keep a gaming table commonly called an E O table, (if any other kind, describe it) contrary to the act of assembly in that case made and provided: These are, therefore, in the name of the state, to require you to seize, and publicly burn, or destroy the said table; and for so doing this shall be your sufficient warrant.

Given under my hand, this      day of      in the year

J. P.

(If the justice who issues the warrant, be an eye witness of the fact, say, whereas it appears to me J P, a justice of the peace, for the district aforesaid, from my own view, that B C, &c.)

*5. Warrant to bring the keeper of a gaming table before a justice, to be dealt with as a vagrant.*

— District.

To A B, constable, &c.

Whereas information hath been, this day, given to me, J P, a justice of the peace, for the district aforesaid, by B C, of      upon oath, that C D, of      doth keep a gaming table, commonly known by the name of (describe the kind of table, &c.) at      in the said district: These are therefore, to require you to bring the said C D, before me, at      on the      day of      at      o'clock, in the morning of the same day, to answer concerning the premises, and to be further dealt with according to law. Given under my hand and seal this      day of      in the year

J. P. [L.S.]

## APPENDIX.

6. *Summons for a justice and three freeholders.*

— District.

To A B, constable, &amp;c.

Whereas I have, this day, received information from A B, upon oath, that C D, of      doth keep a gaming table, commonly called, (here describe it) at      in the district aforesaid, contrary to the act of assembly in that case made and provided; These are, therefore, to require you to summon J W, esq. to attend at      on the      day of      at      o'clock in the morning to join and assist me in inquiring into the truth of the said information; and you are hereby also required to summon the following freeholders, to wit: J R, J S, and J T, to attend at the same time and place, and assist in the said inquiry.

Given under my hand this      day of

J P, [L.S.]

(See title Vagrant, sec. ii, iii, iv.)

7. *Record of trial and judgment.*State of S. Carolina, }  
District, }

At a court of justices and freeholders, at      on the      day of      for the trial of C D, charged with keeping a      table. The court being duly formed, proceeded in the trial, agreeably to the act of assembly in that case made and provided; and after examining the witnesses, as well for, as against, the prisoner, and hearing his defence; the court found the said C D guilty, and adjudged him to be deemed and rated as a vagrant.

J. P. } Justices.  
J. W. }J. R. }  
J. S. } Freeholders.  
J. T. }8. *Recognizance for good behavior.*

— District.

Be it remembered, that on the      day of      in the year C D, of      and A S, and B S, came before me, J P, one of the justices assigned to keep the peace in and for the said district, and acknowledged themselves to owe to the state of South-Carolina, to wit: the said C D, the sum of      dollars, and the said A S and B S, each the sum of      dollars, to be made and levied

of their goods and chattels, lands and tenements respectively, to the use of the said state, if the said C D, shall fail in performing the condition under written.

The condition of this recognizance is such, that whereas the above bound C D, was this day brought before J P and J W, two of the justices of the peace for the said district, and J R, J S, and J T, three disinterested freeholders, of the same district, charged with keeping a gaming table, commonly called ; and was therupon required to give sufficient security for his good behavior, agreeably to the act of the assembly in that case made and provided: If, therefore, the said C D shall be of good behavior, towards the said state, and all the citizens thereof, for, and during, the space of twelve months next ensuing the date of these presents, then this recognizance to be void, or else to remain in full force.

C. D. [L. s.]

A. S. [L. s.]

B. S. [L. s.]

Taken and acknowledged this      day  
of      before me,      J. P.

#### 9. Mittimus.

##### — District.

To A B, constable, and to the keeper of the gaol of the said district.

Whereas C D, of      brought before me upon a charge of keeping a      table, and, by a court of justices and freeholders, duly constituted, adjudged and declared to be a vagrant, hath failed to give security for his good behavior, as required by the act of assembly in such case made and provided: These are therefore to command you, the said constable, forthwith, to convey the said C D, to the common gaol at      in the said district, and to deliver him to the keeper thereof, together with this precept; and you, the said keeper, are hereby required to receive the said C D, into your custody in the said gaol, and him there safely keep, until he shall be thence discharged by due course of law. Given under my hand and seal, this      day of

J. P. [L. s.]

#### JUDGMENT.

(For forms, see " Causes small and mean.")

##### 1. Appeal Bond.

South-Carolina, }  
district. }

Know all men by these presents, that we, A B and B C, of the district aforesaid, are held and firmly bound unto C D, of

the same place, in the full and just sum of    dollars, to be paid to the said C D, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, jointly and severally, and each and every of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this    day of    in the year of our Lord

The condition of the above obligation is such, that, where-as the above named C D, hath, this day, obtained judgment upon summons, before J P, one of the justices of the peace, for the said district, for the sum of      dollars, against the above bound A B, from which judgment the said A B hath prayed an appeal to the next court of common pleas, to be holden for the said district, which is granted; if, therefore, the said A B, shall prosecute his said appeal to effect, or, on failure thereof, shall satisfy the costs and condemnation of the said court, then this obligation to be void, or else, to remain in full force.

A. B. [L. 2-3]

B. C. [L. S.]

**Signed, sealed, and delivered, in  
the presence of J. P.**

2. Form of a record to be made up and certified by the justices to the district court, on such appeal.

— District.

Be it remembered, that, on the      day of      last past, on  
complaint of C D, that A B was indebted to him in the sum of  
    dollars, (on account, &c.) and refused payment, I issue my  
summons against the said A B, requiring him to answer to the  
said complaint: which summons being returned executed, and  
the said A B, appearing before me, upon the evidence hereto  
subjoined, I gave judgment for the said C D, against the said  
A B, for the sum of      dollars; from which judgment, the said  
A B prayed an appeal, to the next court to be holden for this  
district; which is allowed, he having entered into bond with se-  
curity to prosecute the same to effect, according to law.

Certified under my hand and seal, this      day of, &c.

J. P. [L. s.]

*The evidence of A. W. a witness for the plaintiff.*

The said A W, being first duly sworn, saith, that, &c.

*The evidence of J. W. a witness for defendant.*

The said J W, &c.

## APPENDIX.

62

### *Scire facias to revive judgment.*

— District.

Whereas, on the      day of      before me, J P, a justice of the peace, for the district aforesaid, A C obtained a judgment for      dollars, for debt, and      dollars for his costs, against A D, whereof the said A D is convict; and forasmuch as the said A C hath complained to me, that he hath not received any satisfaction for his said debt and costs; therefore, I command you to summon the said A D, to appear before me, at      in the said district, on the      day of      to shew cause why execution should not be made of the debt and costs aforesaid; and that you do then and there, to shew how you have executed this warrant.

Given under my hand and seal, this      day of

J. P. [L. s.]

To A B, constable.

## MILLS.

### *1. Warrant against a Miller for taking more than lawful toll.*

— District.

To A B, constable of the district aforesaid.

Complaint being this day made to me J P, a justice of the peace, for the said district, by C D, that, on the      day of      he, the said C D, carried to the mill of E F, ten bushels of wheat, to be ground into flour, and that P Q, the miller, at the said mill, did take, for the toll for the grinding thereof, one eighth part, contrary to the act in that case made and provided; These are, therefore, in the name of the state, to require you to bring the said P Q, before me, or some other justice of the peace, for the said district, to answer the said complaint.

Given under my hand and seal, this      day of

J. P. [L. s.]

### *2. Another Form.*

— District.

To A B, constable of the said district.

Complaint being this day made to me, J P, a justice of the peace, for the district aforesaid, by C D, that, on the      day

of he carried to the mill of E F, in the said district, five bushels of corn, to be chopped for hominy, and that P Q, the miller, at said mill, did take, for toll, for the chopping thereof, more than one sixteenth part, to wit: one eighth part, contrary to the act of assembly, in that case made and provided: These are therefore, &c. (as in the preceding form.)

### 3. Judgment.

On hearing the within complaint, it being duly proved before me, . . . the within named P Q, is guilty of taking unlawful toll, as charged in the within warrant, by which he hath forfeited a sum equal to the amount of ten times the value of the toll, so unlawfully taken; which, upon a fair estimate, is worth sixty two and a half cents; it is therefore considered that the within named C D, do recover against the said P Q, the sum of six dollars and twenty-five cents, and his costs by him in this behalf expended. Given under my hand the day of

J. P.

|                               |                      |
|-------------------------------|----------------------|
| Corn, per bushel \$1 00       |                      |
| Toll taken, 5-8 of one bushel | \$0 62 $\frac{1}{2}$ |
|                               | 10                   |

---

§625

Costs.

### 4. Execution.

— District.

To A B, constable.

These are, in the name of the state, to charge and command you, that of the goods and chattels of P Q, of the said district, miller, you levy the sum of dollars, which hath been, by me, adjudged to C D, as a fine for the said P Q's taking more than lawful toll; and also the sum of dollars, for his, the said C D's costs and charges expended in and about the recovery thereof: Whereof the said P Q, is convict, according to the act of assembly in that case made and provided. Given under my hand and seal this day of in the year

J. P. [L. s.]

## NEGROES.

## 1. Form of a Warrant to summon a Justice and Freeholders for the trial of a Slave.

South-Carolina. }  
District. }

To any lawful constable of the said district.

Whereas information hath been made unto me, by A B, of  
 that a negro man above named C, the property of      did,  
 on the      day of      (or in the night)      last past, at  
 in the district aforesaid, commit a felony, (here insert how the  
 felony was committed;) and whereas the said negro man na-  
 med C, has been by me committed to the safe custody of E F,  
 a constable of the said district, in order that he may be brought  
 to his trial for the said offence, agreeably to the directions of  
 the act of assembly in that case made and provided: These are  
 therefore to require and command you, that you do immediately  
 after the receipt hereof, summon J W, one of the nearest justi-  
 ces of the said district, to associate with me at      on the  
 day of      ; and that you do likewise summon A C, B C, CC,  
 D C, and E C, five of the neighbouring freeholders of the said  
 parish, to assemble and meet together with us, the said justices,  
 at the time and place aforesaid, in order to proceed in the trial  
 of the said negro, for the said offence. Herein fail not at your  
 peril. Given under my hand and seal this      day of      in the  
 year of our Lord      J P, [L. s.]

## 2. Record of Trial and Judgment.

— District.

At a court of justices and freeholders, holden at      in the dis-  
 trict aforesaid, the      day of      in the year     

Present

J P, } Justices  
J W, }A C, }  
B C, }  
C C, } Freeholders.  
D C, }  
E C, }The State }  
against } Burglary (or as the case may be.)  
Negro C.

The justices and freeholders being sworn agreeably to the  
 directions of the act of assembly, the prisoner was brought to

## APPENDIX.

the bar, when the charge against him was fully opened and explained to him ; and he was thereupon asked, if he was guilty of the felony, wherewith he stood charged, or not guilty : to which the prisoner answered not guilty. Whereupon the court acquainted him, that they were to proceed immediately upon his trial, and would hear his answer to the charge against him, and whatever witnesses he had to produce in his behalf, as well as those against him.

The witnesses produced to support the charge against the prisoner, as also the witnesses for him, being then duly examined and fully heard, the court, after mature consideration, found the prisoner guilty ; Upon which, the said C was asked if he had any thing for himself to offer, or could say, why the court should not proceed to judgment against him ; and he saying nothing but what at first he said, it was then and there considered by the said justices and freeholders that the said C, to the gaol of the aforesaid district, (or to the custody of the constable) from whence he came, shall be sent back ; and thence be led to the place of execution, and there be hanged by the neck, until his body be dead.

*S. Order on Public Treasurer for value of Slave capitally convicted.*

South-Carolina, }  
district. }

At a court of justices and freeholders began to be holden at  
in the district aforesaid, on the      day of      in the year  
Present

J P, } Justices.  
J W, }

A C,  
B C,  
C C, } Freeholders.  
D C,  
E C,

'The State against a negro  
man named C. } Burglary.  
the property of — }

The court met, and proceeded to the trial of the prisoner, agreeably to the directions of the act of assembly in that case made and provided ; and after examining the witnesses for and against the prisoner, and hearing his defence, the court found him guilty, and passed on him sentence of death. But previously to awarding and ordering the said sentence to be executed, appraised and valued, the said negro man named C, at      dollars ; and direct the sum of      dollars to be paid to      , the owner of the said negro, and the remainder, being the sum of

dollars, to agreeably to the act of assembly in that case made and provided. Certified this day of J. C.  
 A. C.  
 B. C.

**4. Summons for the owner of a Gun, &c. seized in the hands of a Slave.**

— District.

To A B, constable.

Whereas B C, of the district aforesaid, hath this day, brought before me J P, a justice of the peace, for the said district, a gun, with powder and shot; and hath made oath, that he found and seized the same in the hands and possession of a certain negro man slave, named , the property of C D, of : These are therefore to require you to summon the said C D to appear before me at on the instant, at o'clock in the morning, to shew cause, if any such be has, why the said gun, &c. should not be forfeited, and vested in the said B C, agreeably to the act of assembly in that case made and provided.

Given under my hand and seal this day of

J. P. [L. s.]

**5. Judgment.**

The within summons being returned executed, and the within named C D, appearing, but not showing any sufficient cause why the said gun, &c. should not be declared forfeited, agreeably to the act of assembly in that case made and provided: I do hereby, in pursuance of the said act, declare the same forfeited, and lawfully vested in the within named B. C. Given under my hand and seal this day of in the year of our Lord

J. P. [L. s.]

**6. Warrant against the owner of a Slave for permitting him to go out of his family to work, without a ticket in writing.**

— District.

To A. B. Constable.

Whereas, information hath been this day made to me J P, a justice of the peace, for the district aforesaid, by C D, that B C, on the day of last past, did permit his negro man slave, named to go out of his family to work, without a ticket in writing, contrary to the act of assembly in that case made and provided: These are therefore, in the name of the state, to require and command you to cause the said B. C. to appear be-

## APPENDIX.

fore me, or some other justice of the peace of this district, to shew cause, if any he can, why he should not be subjected to the penalty annexed to such offence.

Given under my hand and seal this      day of  
J. P. [L. s.]

*7. Warrant against a person employing a Slave, without a Ticket from the owner.*

— District.

To A. B. Constable.

Whereas information hath been this day made to me, a justice of the peace for the district aforesaid, by B C, of      that C D, of      on the      day of      at      in the said district, did employ a negro man slave, named      the property of D E, without a ticket from the said D E, contrary to the act of assembly in that case made and provided: These are therefore, in the name of the state, to require and command you to cause the said C D. to appear before me, or some other justice of the peace for this district, to answer concerning the premises.

Given under, &c.      J. P. [L. s.]

(For form of conviction, see title Conviction.)

*8. Commitment of a Runaway.*

— District.

To the keeper of the gaol of the said district.

Whereas A B, hath this day, brought before me, a justice of the peace for the district aforesaid, a negro man slave taken and apprehended by the said A B, as a runaway: These are therefore, to require you to receive the said slave into your gaol, and him there safely keep until he shall be thence delivered by due course of law. And I do certify that, upon examination of the said A B, on oath, as well as on the evidence, it appears that the said A B, apprehended the said negro, at the distance of      miles from your said gaol. Given under my hand this      day of      J. P.

*9. Conviction of a free Negra for migrating into this State.*

— District.

Be it remembered, that on this      day of      in the year of our Lord      C. a free negro man, is brought before me J P, one of the justices assigned to keep the peace in and for the dis-

district aforesaid, and also to hear and determine divers trespasses and other misdemeanors in the said district, committed by A B, charged with having, on or about the day of last past, migrated into this state, contrary to the act of assembly in that case made and provided; and being asked by me, the said justice, if he can say any thing for himself, why he the said C, should not be convicted of the premises, he pleadeth that he is not guilty of the said offence. Nevertheless, upon examination of the said C, and the testimony of A W, who cometh before me, the said justice, and upon his oath on the holy gospels to him then and there by me administered, deposeth and saith, that (insert the evidence) it appeareth, that the said C, is guilty of the said offence in manner and form as above charged against him; and is liable therefore, to be ordered to leave the state; and thereupon the said C, according to the form of the act of assembly aforesaid, is convicted. And for his said offence is ordered to leave the state within fifteen days from the date hereof. In testimony whereof, I the said justice, to this record of conviction, do set my hand and seal the day and year above written.

**10. Conviction for remaining longer than fifteen days, after being ordered to leave the state.**

— District.

Be it remembered, that on this day of in the year of our Lord , A B, cometh before me, J P, one of the justices assigned to keep the peace in and for the district aforesaid, and also to hear and determine divers trespasses and other misdemeanors in the said district committed, and E F, G H, and I K, freeholders of the said district, and giveth us to understand and to be informed, that one C, a free negro man, who on the day of last past, before J P, esquire, a justice of the peace for the said district, was duly convicted of having migrated into this state, contrary to law, and was ordered to leave the same, still remains in this state, notwithstanding fifteen days have elapsed since the date of the said order, in contempt of the said order, and in violation of the act of assembly in that case made and provided; and the said C, now present before us, being asked if he can say any thing for himself, why he should not be convicted of the premises, answereth and pleadeth that he is not guilty of the said offence: Nevertheless, upon inspecting the record of conviction made as aforesaid, by J P, esquire, and bearing the testimony of J P, esq. (or other person) who cometh before us, and being sworn on the holy gospels, deposeth and saith, &c. it manifestly appeareth unto us, the said

## APPENDIX.

justice and freelothers, that the said C is guilty of the said offence, in manner and form as above charged against him; and is liable therefor, to forfeit and pay the sum of twenty dollar, to the use of the state; and in default of the payment thereof, to be publicly sold, after ten days' notice, for a term of time, not exceeding five years; and thereupon, the said C, according to the form of the act of assembly aforesaid, is convicted; and for his said offence, is ordered to pay down the sum of twenty dollars, and the costs of this conviction; and in default thereof, to be publicly sold for the term of

In testimony whereof, &c.

J. P. Justice of Peace.

E. F. }  
G. H. }  
I. K. }

Freeholders.

**11. Warrant to summon Freeholders.**

— District.

To any lawful constable of the said district.

Whereas, information hath been made unto me, by A B, that a certain free negro man named C, who has been convicted of migrating into this state, and ordered to leave the same, doth, notwithstanding fifteen days have elapsed since the date of the said order, still remain therein: These are, therefore, to require you to summon E F, G H, and I K, three neighboring freeholders, to assemble and meet together, at      on the      day of      at      o'clock in the morning, in order to proceed with me, in the trial of the said negro, for the said offence.

Given under my hand and seal this      day of, &c.

J. P. [L.S.]

**POOR.**

**1. Warrant for a poor person to be examined concerning his settlement.**

— District, }  
or Parish, }

To any lawful constable of the said district.

Whereas complaint hath been made to me, J P, a justice of the peace for the said district, (or parish) by the commission-

ers of the poor, of the said district, (or parish) that A. Q. hath come to inhabit in the said district, and is likely to become chargeable to the said district, not having gained any legal settlement therein: These are, therefore, to require you to bring the said A P, before me, to be examined concerning the last place of his legal settlement. Given under my hand and seal this day of

J. P. [L. S.]

*2. Warrant for the removal of a poor person.*

— District. }  
— Parish. }

To A. B. constable.

Complaint having been made to me, J P, a justice of the peace, for the said parish, (or district,) by the commissioners of the poor of the parish of in the district aforesaid, that I B, M, his wife, J, their son, aged eight years, and C, their daughter, aged four years, have come to inhabit, in the said parish, (or district) of , and are likely soon to become chargeable to the said parish, (or district,) not having gained a legal settlement; I, upon due proof thereof, as well upon examination of the said I B, upon oath, as otherwise, and likewise, upon due consideration, had of the premises, do adjudge the same to be true; and I do also adjudge, that the lawful settlement of them, the said I B, M, his wife, and J and C, their children, is in the parish, (or district) of : I do therefore require you, the said constable, to convey the said I B, M, his wife, and J and C, their children, from and out of this parish, to the parish of and them deliver to some one, or more, of the commissioners of the poor, of the said parish of together with this my order, or a copy thereof, at the same time shewing them the original: And I do also hereby require the commissioners of the poor, of the said parish of to receive and provide for them, the said I B, M, his wife, and J and C, their children, as inhabitants of their parish.

Given under my hand and seal, this day of in the year of our Lord

J. P. [L. S.]

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RIOT.

*1. Record of a Riot on view.*

— District.

Be it remembered, that on the day of in the year I, J P, one of the justices assigned to keep the peace, in the

said district, upon the complaint and request of A B, of      in the said district, in my proper person, have come to the house of him, the said A B, and then and thore, do find A O, B O, and C O, of      and other malefactors and disturbers of the peace of this state, to me unknown, to the number of      persons, in a warlike manner arrayed, to wit: with clubs, swords, and guns, unlawfully and riotously assembled, and the same house besetting, and many evils against him, the said A B, threatening (or, as the case may be) to the great disturbance of the peace of this state, and terror of the people. Taken by me the day and year above written.

J. P.

### *2. Commitment of Rioters upon view.*

— District.

To the keeper of the common gaol of the said district.

Upon complaint made unto me by A B, of      in the district aforesaid, I did, this      day of      go to the house of the said A B, and there did see A O, B O, and C O, and others, assembled in a riotous and unlawful manner, at      aforesaid, to the terror of the people, and against the peace of this state: I do, therefore, herewith send you the bodies of the said A O, B O, and C O, they being convicted of the said offence, by my own view, testimony, and record; commanding you, the keeper of the said gaol, to receive them into your custody, and them safely to keep, until they shall be thence delivered by due course of law.

Given under my hand and seal, the day and year above written.

J. P. [L. s.]

### *3. Warrant to apprehend Rioters.*

— District.

To any lawful constable of the said district.

Whereas information and complaint have been this day made unto me, one of the justices assigned to keep the peace in the district aforesaid, by A B, of      upon oath, that A O, B O, and C O, and others, did, on the      day of      in the said district, riotously and unlawfully assemble together, to the terror of the people, and against the peace of the state: These are therefore, in the name of the state, to require and command you to apprehend the said A O, B O, and C O, and bring them before me, or some other justice of the said district, to answer to the said complaint, and be further dealt with, as the law directs. Given under my hand and seal, this      day of      in the year of our Lord

J. P. [L. s.]

## ROADS.

1. *Appointment of an Overseer.*

— District.

At a Board of Commissioners for the Roads, &c. for the district aforesaid, holden at      in the said district, this      day of      it is ordered, that J O, be appointed, and the said J O, is hereby appointed, overseer of the road from      to      in the said district; and the said J O, is also hereby required, faithfully and truly to execute the said office of overseer of the roads, according to law.

A. B. clerk of the board.

A true copy from the minutes.

2. *Appointment of a person to summon the inhabitants, by three Commissioners.*

— District.

A S, is hereby appointed and required, to summon, (name the person liable to work on that particular road) to work on the road from      to      in the district aforesaid, on      the      day of      to meet at      at      o'clock, in the morning of the same day, and to continue to work, from day to day, not exceeding      days, until the repairs of the said road shall be completed. Given under our hands this      day of

A: B. }  
 B. C. } Commissioners of the  
 C. D. } roads, &c.

3. *Summons against a person who refuses to act as overseer.*

— District.

Whereas information hath been made to us, A B, B C, and C D, three of the commissioners of the roads, for the district aforesaid, by I C, that J O, who was duly appointed overseer of the road from      to      on the      day of      last past, hath refused to act under the said appointment: These are, therefore, to require you to summon the said J O, to appear before us, at      on the      day of      at      o'clock in the morning, to shew cause, if any he can, why he should not be subjected to the forfeiture and payment of      dollars, according to the act of assembly, in that case made and provided.

Given under our hands this      day of, &amp;c.

A. B.

B. C.

C. D.

To E F, constable of the said district.

## APPENDIX.

4. *Warrant to levy the fine.***— District.****To E F, constable of the said district.**

Whereas J O, of \_\_\_\_\_ who was duly appointed overseer of the road from \_\_\_\_\_ to \_\_\_\_\_ in the district aforesaid, has refused to act under the said appointment, and has failed to give any sufficient reason to excuse him for such refusal, whereby he has forfeited the sum of \_\_\_\_\_ dollars: These are, therefore, to command you to levy, or cause to be levied, of the goods and chattels of the said J O, the said sum of \_\_\_\_\_ dollars; and also, the sum of \_\_\_\_\_ dollars, for the costs and charges of this warrant.

Given under our hands, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord

A. B.  
B. C. }  
C. D. } Commissioners.

5. *Warrant against a person neglecting to summon inhabitants.***— District.****To E F, constable of the said district.**

Whereas A S is duly convicted before us, A B, B C, and C D, commissioners of the roads, &c. for the district aforesaid, for that he, the said A S, being duly appointed to summon such of the inhabitants as are declared liable to work on the road from \_\_\_\_\_ to \_\_\_\_\_ in the said district, to work on the said road, on the \_\_\_\_\_ day of \_\_\_\_\_ last past, did neglect to summon the said inhabitants, according to the precept to him directed; whereby the said A S, has forfeited the sum of \_\_\_\_\_ dollars: we do therefore command you to levy, or cause to be levied, of the goods and chattels of the said A S, the said sum of \_\_\_\_\_ dollars; and also, the sum of \_\_\_\_\_ dollars, for the costs and charges of this warrant.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year

A. B.  
B. C.  
C. D.

6. *Warrant to commit a white person to gaol, on non-payment of a fine for not working, when in place.***— District.**

**To E F, constable of the said district, and J K, keeper of the gaol.**

Complaint having been made to us, A B, B C, C D, &c. commissioners of the roads, for the district aforesaid, by J O, over-

near of the road from      to      in the said district, that E D, on the      day of      last, when in the place, did, a second time, refuse to work on the said road, and otherwise misdemean him-self; and the said E D, giving no sufficient reason to excuse his said refusal and misdemeanor; he, the the said E D was there-upon fined ten dollars, by the board of commissioners, on the      day of      past: And where-s the said E D has refused to pay the amount of the said fine: These are therefore to com-mand you, the said E F, immediately to convey the body of the said E D to the common gaol of the said district; and you, the said J K, to receive the body of the said E D into your custody in your said gaol, and him there to detain for the space of ten days, unless the said fine of ten dollars, and the charges of this warrant, and his commitment thereon, be sooner paid.

Given under our hands this      day of

|       |            |
|-------|------------|
| A. B. | } Com'mrs. |
| B. C. |            |
| C. D. |            |
| A. G. |            |
| B. G. |            |

|       |                  |
|-------|------------------|
| C. G. | } Commissioners. |
| D. G. |                  |

(Where a power is not vested in a smaller number, to do any act, it seems that a majority of all the commissioners of the dis-trict, or parish, should concur.)

#### *7. Warrant to levy a fine for not sending slaves.*

— District.

To all and singular the sheriffs of the said state.

You, and each of you, are hereby required, without delay, to levy, of the goods and chattels of C L, of the district aforesaid, in your respective districts, the sum of      dollars, which, by us, on the      day of      was adjudged against the said C L, for not going, nor sending his male slaves, viz: nine in number, to work on the road from      to      in the said district, on the eighteenth, nineteenth, and twentieth-days of      last past; and also, the sum of      dollars, for the costs and charges of this war-rant; and that you have the same to render to us, at      on the      day of      together with this warrant.

Given under our hands this      day of, &c.

|       |                                                             |
|-------|-------------------------------------------------------------|
| A. B. | } Com'r's of Roads<br>B. C. } for      district.<br>C. D. } |
|-------|-------------------------------------------------------------|

## APPENDIX.

## SEARCH WARRANT.

**District.****To A C, constable.**

Whereas A J. of      hath this day made oath before J P., one of the justices assigned to keep the peace, in and for the district aforesaid, that the following goods, viz: &c. were, on the day of      by some person, or persons, unknown, feloniously taken, stolen, and carried away, out of the house of him, the said A J. at      in the district aforesaid, and that he hath probable cause to suspect, and doth suspect, that the said goods, or a part thereof, are concealed in the house of A O, in the said district: These are, therefore, to authorize and require you, with necessary and proper assistants, to enter, in the day time, into the dwelling house of the said A O, and there diligently to search for the said goods; and, if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said A O before me, or some other justice of the peace, of this district, to be disposed of, and dealt withal, according to law.

Given under my hand and seal, this      day of      in the year of our Lord      J P, [L. s.]

## SURETY FOR THE PEACE.

*Warrant.***District.****To any lawful constable.**

Forasmuch as A T, of      hath personally come before me, and duly made oath, that he, the said A T, is afraid A O, of butcher, will beat, or do him some bodily hurt, and hath therefore prayed security of the peace against him, the said A O: These are, therefore, to require you, immediately on the receipt hereof, to bring the said A O before me, to find surety, as well for his personal appearance, at the next general sessions of the peace, &c. to be holden at      on      next; as also, for his keeping the peace, in the mean time, towards all the good people of this state, and chiefly towards the said A T.

Given under my hand, this      day of      in the year

J. P. [L. s.]

## APPENDIX.

641

### 2. Recognizance.

#### — District.

Be it remembered, that on the      day of      in the year  
A O, of      and A S, and B S, of the same place, came before  
me, J P, one of the justices assigned to keep the peace within  
the said district, and acknowledged themselves to owe to the  
state of South Carolina, to wit: the said A O, the sum of  
dollars; and the said A S and B S, each, the sum of      dollars,  
to be made and levied of their several and respective goods and  
chattels, lands and tenements, to the use of the state, if the said  
A O shall fail in performing the condition underwritten.

The condition of this recognizance is such, that, if the above  
bound A O shall personally appear at the next general sessions  
of the peace, &c. to be holden at      on      next, to do and re-  
ceive what shall then and there be enjoined him by the court,  
and in the mean time shall keep the peace towards all the good  
people of this state, and especially towards A T, of      then  
the said recognizance shall be void, or else remain in full force,

A. O. [L. s.]

{ Taken and acknowledged, this      day of      A. S. [L. s.]  
in the year      before me      J. P.      B. S. [L. s.]

### 3. Mittimus.

#### — District.

To A B constable, and to the keeper of the common gaol of the  
said district.

Whereas A O, of      is now brought before me, J P, one of  
the justices assigned to keep the peace in and for the said dis-  
trict, requiring him to find sufficient sureties to be bound with  
him in a recognizance, for his personal appearance at the next  
general sessions of the peace, &c. to be holden for the said dis-  
trict, and in the mean time to keep the peace towards the state  
of South Carolina, and all the good people thereof, and especi-  
ally towards A T, of      in the said district: And whereas, he,  
the said A O hath refused, and doth now refuse, before me, to  
find such sureties: These are, therefore, to command you, the  
said constable, forthwith, to carry the said A O to the common  
gaol, at      in the said district, and to deliver him to the keeper  
thereof, together with this precept; and you, the said keeper, to  
receive the said A O into your custody, in the said gaol, and him  
there safely keep until he shall find such sureties, as aforesaid.

Given under my hand and seal this      day of

J P, [L. s.]

## APPENDIX.

4. *Supersedeas.*

## — District.

To the sheriff, and all and singular the constables and other officers of the said district.

Forasmuch as A O, of      hath personally come before me, J P, esq. at      in the said district, and undertaken for himself under the penalty of      dollars, and A S and B S, have undertaken, each of them, under the penalty of      dollars, that he, the said A O, shall personally appear at the next general sessions of the peace, &c. to be holden for the said district, then and there to do and receive what shall be enjoined him by the said court, and, in the mean time, shall well and truly keep the peace towards all the good people of the state of South-Carolina, and especially towards A T, of      : Therefore, I do command you, and every of you, that you utterly forbear and cease to arrest, take, imprison, or otherwise, by any means, for the said cause, to molest the said A O; and, if you have for the said occasion, and for none other, taken and imprisoned him, the said A O, that then him you deliver, or cause to be delivered, and set at liberty, without further delay.

Given under my hand and seal, &c.

J P, [L. s.]

5. *Release of the surety for the peace, indorsed on, or written under the recognizance.*

## — District.

Be it remembered, that on the      day of      in the year the aforesaid A T, hath come before me, one of the justices of the peace for the said district, and freely devised and released, as much as in him lieth, the aforesaid security of the peace by him prayed before me, against the within (or above) named A O.

Given under my hand and seal, this      day of

J P, [L. s.]

## SWEARING—PROFANE.

1. *Conviction.*

## — District.

Be it remembered, that on the      day of      in the year A O, of      gentleman, is convicted before me J P, a justice of

the peace in and for the district aforesaid, of profane swearing, upon my own view and hearing; whereby the said A O hath forfeited dollars, to the use of the poor of the said district.

Given under my hand and seal the day and year aforesaid.

J P, [L. s.]

*2. Warrant of Distress.*

— District.

To A B, constable,

Whereas A O, gentleman, has been duly convicted by my own view and hearing, of profane swearing, and has thereby forfeited dollars, to the poor of the district aforesaid: These are therefore, in the name of the state, to require you to levy by distress and sale of the goods and chattels of the said A O, the sum of forty three and three fourths cents, for his offence aforesaid, and dollars, for the costs of this warrant; and that you pay the said fine to the commissioners of the poor of the said district, for the use of the poor thereof. Herein fail not, and make due return of this warrant to me, on or before the day of next. Given, &c.

J P, [L. s.]

*3. Certificate of Conviction.*

— District.

I, J P, one of the justices of the peace for the said district, do hereby certify to the clerk of the peace, that the persons, whose names are hereunderwritten, were since the last general sessions of the peace, &c. on the day of last, convicted before me for swearing profane oaths, each. Given, &c.

J. P. [L. s.]

TAVERNS.

*Bond.*

STATE OF SOUTH-CAROLINA, }  
district. }

Know all men by these presents, that we, A B, B C, and C D; of are held and firmly bound unto E F, F G, &c. (names of commissioners of roads) commissioners of the high roads and bridges for the district aforesaid, and to their suc-

## APPENDIX.

cessors in office, in the full and just sum of dollars; to be paid to the said commissioners for the use of the said district; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of

The condition of the above obligation is such, that if the above bound A B, do well and truly, and in every respect, conform to, and abide by, the laws now in force in this state, and which shall be enacted and be in force during the course of twelve months from the date hereof, respecting taverns, or retailers of spirituous liquors, and shall maintain and keep good order and rule, and shall suffer no disorders, or unlawful games to be used in his house, nor in any opt-house, yard, or garden thereunto belonging, during the said term, and shall keep clean and wholesome meat and drink and lodging for travellers, and the usual provender for horses, then this bond to be void.

Signed, &c.

A. B. [L. s.]

B. C. [L. s.]

C. D. [L. s.]

*License.*

This is to certify that A B hath given bond in this office for dollars, with two sufficient sureties for his due compliance with all the laws now in force, and which shall be enacted and be of force during the course of twelve months from the date hereof, respecting taverns, or retailers of spirituous liquors, and that the said A B, is duly authorized to retail spirituous liquors, (or keep tavern, or a billiard-table, &c.) at (describe the place particularly) from this day of in the year of our Lord until the day of next ensuing the date hereof. Given under my hand at this day of  
 &c. T. H.

Clerk to the commissioners of roads for district.

**TENANT.**

1. *Warrant to summon a Jury.*

District.

To A. S. Sheriff of the said District.

Whereas A B, hath this day complained before us, J P, a justice of the peace, and J Q, a justice of the quorum for the

district aforesaid, and made due proof, that he the said A B, did on the day of demise in writing to C D, a certain (describe the premises) in the said district, and that the term for which the was demised, has expired, and is now fully ended; and the said C D, refuses to deliver back the possession thereof to him, the said A B: These are therefore, to require you to summon the several persons named in the pannel to this warrant annexed, to be and appear at on the day of at o'clock in the forenoon, to serve as jurors in the said case, and to try the facts in dispute between the parties.

Given under our hands and seals this day of in the year of our Lord

J. P. [L. s.]

J. Q. [L. s.]

*2. Summons for Tenant.*

— District.

To A C, constable of the said district,

Whereas complaint hath been this day made before us, I P, and J P, two of the justices assigned to keep the peace in and for the district aforesaid, by A B, of , that C D refuses to deliver back the possession of a certain (describe the premises) to him, the said A B, which he, the said A B, had, on the day of leased in writing to the said C D, the term, for which the said lease was made, being now fully ended: These are therefore, to require you to summon the said C D, to be and appear before us, the said justices, at on the day of at o'clock in the forenoon, to shew cause, if any he can, why restitution of the possession of the said demised premises should not be forthwith made to the said A B. Given, &c.

I P. [L. s.]

J P. [L. s.]

*3. Record of the finding of the Jury.*

— District.

Be it remembered that on the day of A B, of complained to us I P and J P, two of the justices assigned to keep the peace in and for the district aforesaid, that C D, had refused to deliver back to him a certain &c. (describe the premises) which he the said A B, had leased in writing to the said C D, the term, for which the said lease was made, being then fully ended, and demanded of us the remedy, in that case, by law provided: Whereupon, the said A B, making due proof to us, the said justices, that he had leased the premises in writing to the said C D, and that the said lease was then determined,

## APPENDIX.

we issued our warrant, directed to the sheriff of the said district, requiring him to summon eighteen neighboring freeholders, to be and appear before us, the said justices, at     on the     day of     to serve as jurors in the said case, and try the facts in dispute between the parties; and the said C D, as well as the said freeholders, appearing at the time and place appointed, twelve of the said freeholders, namely, A, B, C, D, &c. good and lawful men, were duly impanelled and sworn to try the issue between the justices; and after hearing all the evidence, as well for the defendant as for the plaintiff, upon their oaths do say, that the said A B, did, on the     day of     lease, in writing, the premises aforesaid, to the said C D, that the time, for which the said lease was made, is now fully ended, and that the said C D, hath refused to deliver back the possession of the said premises, as the said A B, hath thereof complained against him; and thereupon it is considered, that restitution of possession of the demised premises be made to the said A B, agreeably to the act of assembly in that case made and provided; and that the said C D do pay all the costs incurred in the investigation of this case.

Given under our hands and seals, this     day of     in the  
year of our Lord  
I. P. [L. S.]  
J. P. [L. S.]

4. *Warrant to the sheriff, for restitution.*

— District.

To A S, sheriff of the said district.

Whereas, by an investigation made before us, I P and J P, two of the justices assigned to keep the peace in and for the said district, on the     day of     last past, by virtue of the act of assembly in that case made and provided, upon the oath of A, B, C, D, &c. freeholders of the neighborhood, duly impanelled and sworn, for that purpose, it is found, that A B, of     did, on the     day of     demise, in writing, a certain (describe the premises) to C D, of     and that, although the time, for which the said lease was made, had expired, yet the said C D doth refuse to deliver back to the said A B, the possession of the same: These are, therefore, in the name of the state, to require you, forthwith, and within ten days from the date of your receipt hereof, to deliver to the said A B, possession of the said demised premises, and for that purpose, if necessary, to break open doors, and to call to your assistance the posse comitatus; and also, to levy, or cause to be levied, of the goods and chattels of the said C D, the sum of     dollars, for the expenses incurred by the investigation; and make return of this warrant, to

~~tion, or before, the~~ day of next. Herein fail not on  
~~pain of the forfeiture of five hundred dollars, and the damages,~~  
~~that may ensue thereon.~~

Given under our hands and seals, this day of in the  
year J. P. [L.S.] J. P. [L.S.]

## VAGRANTS

### *1. Warrant.*

— District.

To any lawful constable of the said district.

Whereas information hath been this day of made to me, J. P. one of the justices assigned to keep the peace, in and for the district aforesaid, by A C, of on oath, that I V, of is, to the best of his knowledge and belief, a vagrant, according to the act of assembly in that case made and provided: And whereas, the said A C, is a person of reputable character, whose information, aforesaid, is entitled to full credit: These are, therefore, in the name of the state, to require you to bring the said A V, before me, or some other justice of the peace, for this district, to be dealt with according to law.

**Given under my hand and seal, the day and year aforesaid.**

J. P. [L. S.]

**2. Summons for Justices and Freeholders.**

—, District.

Whereas information hath been made to me, by A. D., on oath, that A V. of [redacted] is, to the best of his knowledge and belief, a vagrant, according to the act of assembly, in that case made and provided: These are therefore to require you, forthwith, to summon E P., esq. to associate with me, at [redacted] on the [redacted] day of [redacted] at [redacted] o'clock, in the forenoon; and that you do likewise summon G, H, I, J, and K, freeholders, of the neighbourhood, to assemble and meet together with us, the said justices, at the time and place aforesaid, to assist in inquiring into the

## APPENDIX.

truth of the said information; and in what manner, and by what means, the said A V maintains his family.

Given under my hand this      day of      in the year

J P, [L. s.]

*S. Record of the trial and judgment.*

— District.

At a court of justices and freeholders, holden at      in the district aforesaid, on the      day of      in the year

Present,

I. P. } Justices.  
J. P. }

E. G. }  
F. H. } Freeholders.  
G. I. }

The state, }  
against } Vagrancy.  
A. V.

The justices and freeholders being convened, and the said A V brought before them, they proceeded to examine into the truth of the charge, and to inquire in what manner, and by what means, the said A V gained his livelihood, and maintained his family; and after hearing all the evidence, as well in behalf of the said A V, as for the state, and his defence; the court after mature consideration, adjudged the said A V, a vagrant, and liable to the penalties of the act of assembly in that case made and provided.

The evidence of A W, taken upon oath, in the above case, before us, the aforesaid justices and freeholders, at the time and place above mentioned.

The said A W, upon his oath, saith, that, &c.

Certified under our hands and seals, the day and year above written.

I. P. [L. s.] } Justices.  
J. P. [L. s.] }  
E. G. [L. s.] }  
F. H. [L. s.] } Freeholders.  
G. I. [L. s.] }

(For recognizance for good behavior and mittimus, see title  
Gaining, 8, 9.)

**AGREEMENTS.**

*Articles of arrangement for the purchase of a tract of land.*

The following articles of agreement, made and entered into the      day of      in the year      between A B, of      &c. et

the one part, and D E of &c. of the other part, witnesseth, that the said A B, for and in consideration of the sum of dollars, to be paid by the said D E, in pursuance of the covenant and agreement of the said D E, hereinafter contained, doth, for himself and his heirs, covenant and agree with the said D E, that he, the said A B, or his heirs, shall and will, before the day of make out a complete title in fee simple to, and (by such sufficient deed, or deeds, of conveyance as such shall be approved by the said D E, or his counsel) convey and assure, in possession, to the said D E, and his heirs, for ever, free from all manner of incumbrances, all that tract, or parcel of land, lying; &c. (here describe the land particularly.) And that the said D E, in consideration of the said covenant and agreement on the part of the said A B, doth, for himself, his heirs, executors and administrators, covenant and agree with the said A B, that he the said D E, his heirs, executors, or administrators, shall and will, upon the making and executing of such conveyance and assurance, as aforesaid, pay, or cause to be paid to the said A B, his certain attorney, executors, administrators, or assigns, the sum of dollars, as and for, and in full consideration for the absolute purchase of the said tract, or parcel of land.

In testimony whereof, the parties have hereunto interchangeably set their hands and seals, the day and year first above written.

(Test.)

A. B. [L. s.]

D. E. [L. s.]

### AGREEMENT TO BUILD A HOUSE.

This agreement made and entered into, the day of between A B, of &c. of the one part, and D E, of &c. of the other part, witnesseth, that the said A B, for himself, his heirs, executors and administrators, for the consideration hereinafter mentioned, doth covenant, promise, and agree, to and with the said D E, his executors, administrators and assigns, that he, the said A B, his executors, or administrators, shall and will do and perform, or cause to be done and performed, all the necessary work belonging to a house-pauper, and will begin and finish with all convenient speed, in a good and workmanlike manner, on, or at (describe the place where the house is to be erected) one good and substantial house, (with tene-ments) of the following dimensions, and in the manner and form hereinafter particularly described, that is to say, (here de-

## APPENDIX.

scribe the house.) And also, that he, the said A. B., his executors, or administrators, shall and will build, or cause to be built, in a workmanlike manner, a kitchen, &c. (describe the buildings) to be composed of such materials as the said D. E., &c. shall provide and furnish for the same, and that he will use the utmost care in working up the said D. E.'s materials for the said buildings, to the best advantage; and that, in consideration of the said work so to be done and performed, the said D. E., for himself, his heirs, executors and administrators, doth covenant, promise, and agree to and with the said A. B., his executors, administrators, and assigns, that he will well and truly pay, or cause to be paid to the said A. B., his certain attorney, executors, administrators, or assigns, the sum of      dollars, (here state the time of payment) and for the performance of the above covenants, the parties do bind themselves, each to the other, in the penal sum of      dollars.

A. B. [L. s.]

(Test.)

D. D. [L. s.]

Where there are mutual covenants, each party should keep a copy regularly executed.

## ATTORNEY—LETTERS OF.

Know all men by these presents, that I, A. B. of      district, in the state of S. C. for divers good causes and considerations me theremeto moving, have made, constituted, and appointed C. D. of      my lawful attorney, for me, in my name, and in my behalf, to bring to a reckoning, and to adjust and settle accounts with, all and every person and persons whomsoever, who is, or are, or shall be indebted to me, upon any account, or by any ways or means whatsoever, or howsoever; and by all lawful ways and means to demand, sue for, recover and receive, all such sums of money, goods, commodities, merchandizes, or effects as now are, or shall, become due and payable to me from any person, or persons, whomsoever, as aforesaid; and upon receipt thereof, or of any part thereof, in my name, to execute and deliver sufficient acquittances and discharges for the same; and further to do all lawful acts, and things whatsoever, concerning the premises, as fully and effectually, in every respect, in my name, as I could do if I were personally present; hereby ratifying and confirming all and whatsoever my said attorney shall lawfully do, or cause to be done, in my name, in and about the premises.

In testimony whereof, I have hereunto set my hand and seal,  
this      day of

(Test.)

A. B. [L. s.]

## APPENDIX.

.63.

If the agency of the attorney be limited to certain transactions, it should be so expressed in the letter, or power of attorney.

### 2. Letter of Attorney from Assignees to Assignor.

To all whom it may concern, we and end greeting:

Whereas of &c. for and towards satisfaction and payment of the debts and monies by him due and owing unto us and others, his creditors, hath, by deed of assignment duly executed, bearing date the day of at aforesaid, assigned, transferred and set over unto us the said and certain debts or sums of money, and the securities and vouchers for the payment thereof in the said deed mentioned, remaining due and owing to the said : And whereas, well knowing and confiding in the integrity and ability of the said and in his perfect knowledge of the said affairs, we have thought it proper and expedient to authorize the said to collect all such debts, or sums of money as aforesaid, to be paid over into the hands of us the said assignees, for the use and benefit of the creditors of the said conformably to the said assignment: Now know ye, that we the said and have made, constituted and appointed, and do hereby make, constitute and appoint the said our true and lawful attorney, for us, and in our names, but to the use of us and the other creditors as aforesaid, of the said to ask, demand, sue for, recover and receive all and every such sum and sums of money, and debts mentioned in the above mentioned deed, as now are due and owing unto the said ; and to have, use and take all lawful ways and means, in our names or otherwise, for the recovery thereof, and to compound and agree for the same; and on receipt thereof; acquittances or other sufficient discharges for the same, for us, and in our names, to make, seal and deliver, to do all lawful acts and things whatsoever concerning the premises, as fully and effectually in every respect, as we could do if we were personally present; and an attorney or attorneys under him for the purposes aforesaid, to make, and at his pleasure such power to revoke: hereby ratifying and confirming all, and whatsoever, our said attorney shall in our own names lawfully do, or cause to be done, in and about the premises. In testimony whereof, &c.

### 3. Letter of Attorney from an Executor to conduct the affairs of an Estate.

Know all men by these presents, that I, A. B. of &c. executor of the last will and testament of D. E., of deceased,

## APPENDIX.

for divers good causes and considerations me therunto moving, have made and ordained, and do hereby make, ordain, and in my place and stead put and substitute E. F. of &c. to be my true and lawful attorney for me, in my name, and to and for my use, as executor as aforesaid, to adjust and settle accounts with all and every person and persons whomsoever, who may be indebted to the estate of the said D E, deceased, upon any account, or in any manner whatsoever; and to demand, sue for, recover and receive, by all lawful ways and means whatsoever, of and from all and every such person and persons, all and every such debt, due, or sum of money, and also, all and singular such goods, commodities, merchandizes and effects, as now are or shall become due and payable, or belonging to the said estate, upon any account, or in any manuer whatsoever, or howsoever; and likewise for me, and in my name, as executor of the said D E, deceased, to enter into and take possession of all and singular the messuages, lands and plantations belonging to the estate of the said deceased, with all and every the buildings, slaves, servants, cattle, mills, utensils, appurtenances, and things whatsoever, therunto, or to any of them belonging; and from time to time, to demise and let the same, or any part thereof, by lease, for such term or terms of years as be my said attorney shall think fit, and for the most rent that he can get for the same; and where any rent now is, or may hereafter grow due for any of the said messuages, or lands, if need be, to distrain for the same, and to dispose of such distress as the law directs; and upon receipt or recovery of all or any of the said debts, dues, sums of money, rents and arrears of rent, goods and effects, sufficient acquittances and discharges for the same, for me and in my name, to make, seal and deliver: and in case my said attorney shall think fit to contract and agree for the sale, and to sell all, or any of the messuages, lands and plantations, or any part thereof, or any mills, slaves, utensils, or other things belonging to the said estate, upon such sale or sales, to sign, seal and execute such agreements, deeds, writings, conveyances and assurances; and to do and perform all such acts and things for the perfecting thereof as shall be requisite, and to receive, for my use, as executor, the sum and sums of money, or considerations, for which the said property, or any part thereof, shall be sold, and upon receipt thereof, to give a sufficient discharge or discharges for the same; and to do all lawful acts and things whatsoever concerning the premises, as fully and effectually in every respect, as I myself could do, if I were personally present; and an attorney or attorneys under him for the purposes aforesaid, to make, and such power, at his pleasure to revoke: hereby ratifying and confirming all and whatsoever my said attorney shall in my name, as executor, as aforesaid, lawfully do or cause to be done, in and about the

premises; and for myself, my executors and administrators, covenanting, promising and agreeing to and with the said E F, his executors and administrators, that I, the said A. B. my executors or administrators, shall and will, at any time or times hereafter, upon request in that behalf, make, do, perform and execute all or any such further or other acts, deeds and things whatsoever, for the better perfecting and confirming all or any sale or sales, which shall be made of all or any part of the above mentioned property, whether real or personal, by him the said E F, or such person or persons as he shall, by writing authorize and appoint to act in the premises, as shall be reasonably required. In testimony, &c.

**BILL OF SALE EXECUTED BY ATTORNEY.**

Know all men by these presents, that I, A B, of      &c. for  
and in consideration of the sum of      dollars, to me in hand  
paid by D E, of      the receipt whereof I do, hereby acknow-  
ledge, have bargained, sold, and delivered, and do, hereby, bar-  
gain, sell, and in plain and open market, deliver unto the said  
D E, a certain female negro slave, named      to have and to  
hold the said slave and her future offspring, issue and increase,  
unto the said D E, his executors, administrators and assigns,  
forever: and that I, the said A B, for myself, my heirs, execu-  
tors and administrators, do covenant, promise and agree, to,  
and with the said D E, that I will warrant and defend the said  
slave, named      and her future increase, unto the said D E,  
his executors, administrators and assigns, from and against  
every person whomsoever: In testimony whereof, I, the said  
A B, by E F, my attorney, lawfully constituted and appointed,  
in this behalf, by letter of attorney duly executed on the      day  
of      have hereunto set my hand and seal, this      day of

Test.

A. B. [L. S.  
By E. F. his attorney.

## BARGAIN AND SALE.

*Deed of bargain and sale, from husband and wife, to  
South-Carolina. }  
district. }*

Know all men by these presents, that A. B. and C. his wife,  
in the state aforesaid, in consideration of the sum of

## APPENDIX.

dollars, to them in hand paid by D E, of have granted, bargained, sold and released, and do hereby grant, bargain, sell, release and convey unto the said D E, all that, &c. (describe the premises) together with all and singular, the rights, members, hereditaments, and appurtenances thereto belonging, or in any wise incident or appertaining; to have and to hold all and singular the premises, unto the said D E, his heirs and assigns forever: And the said A. B. and C. his wife, for themselves, their heirs, executors and administrators, do covenant with the said D E, that they, the said A. B. and C. his wife, now are lawfully, rightfully, and absolutely seized in fee simple, of and in the said without any reversion, remainder, trust, limitation, use, or other matter, restraint, or thing whatsoever, to alter, change, make void, lessen, incumber, or determine the same; and that they the said A. B. and C. his wife, now have in themselves, good right, full power, and absolute authority, to grant and convey the said with its appurtenances, unto the said D E, his heirs and assigns forever, in manner aforesaid;\* and that they will, at all times hereafter, warrant and defend all and singular, the premises and appurtenances unto the said D E, his heirs and assigns, free from the claim or claims of them the said A. B. and C. his wife, or either of them, their, or either of their heirs, and of all and every other person and persons whomsoever. In testimony whereof, the said A. B. and C. his wife, have hereby set their hands and seals, this day of &c.—a.

A B, [L. s.]  
C B, [L. s.]

Sealed and delivered in                    L. M.  
the presence of                            F. O.

\* The covenant for good title is necessary to enable the purchaser to maintain an action for damages against the seller, wherever he can make it appear that the seller's title was defective without having previously suffered an execution by some other person.

a.—It is not essentially necessary that the wife should join with the husband in the deed—in the above form, she is added merely for conformity. For the modes of proceeding in cases of renunciations of dower, or inheritance, see Chap. XV, Sec. III and IV.

## BILLS OF EXCHANGE.

*An Inland Bill of Exchange.*

COLUMBIA, MAY 10, 1813.

Exchange for \$5000.

At sight (or at      days sight, or      days after date) pay to  
Mr. A B, or order, five thousand dollars, value received of him,

and place the same to account, as per advice (or without further advice) from

D. E.

To Mr. E. F. merchant in Charleston.

### A FOREIGN BILL.

CHARLESTON, MAY 10, 1819.

Exchange for \$10,000.

At      days after date, (or at      days after sight) of this my first bill of exchange, (second and third of same tenor and date not paid) pay to Messrs. A. B. & Co. or order, ten thousand dollars, value received of them, and place the same to account, as per advice.

C. D.

To Mr. E F, merchant, London.

### BILL PENAL.

On or before the      day of      (or      days after date) I promise to pay to D E, or order, one hundred dollars; to which payment I bind myself, my heirs, executors and administrators, in the penal sum of two hundred dollars. Witness my hand and seal, this      day of      —a.

Test.

A B, [L. S.]

### PROMISSORY NOTE.

On or before the      day of      (or      days after date) I promise to pay to D E, or order, the sum of forty dollars.— Witness my hand, this      day of      —a.

Test.

A. B.

a—No particular form is necessary—any engagement to pay money under a penalty, will amount to a penal bill—and any words, which import a promise to pay, under hand, without seal or penalty, will constitute a promissory note. It is not necessary that there should be a *subscribing witness*—all securities under seal have a preference in the payment of debts, where there is a deficiency of assets.

## APPENDIX.

## BOND FOR THE PAYMENT OF MONEY.

Know all men by these presents, that I, A. B., &c. am held and firmly bound unto C. D., of &c. in the sum of to be paid to the said C. D., his certain attorney, executor, administrators, and assigns, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents; sealed with my seal, and dated this day of in the year .

The condition of the above obligation is such, that if the above bounden A. B., his heirs, executors, or administrators, shall pay, or cause to be paid, unto the above named C. D., his certain attorney, executors, administrators or assigns, the full sum of dollars, on, or before the day of next, then the above obligation to be null and void, or else to remain in full force and virtue.

Signed, sealed and delivered in A. B. [L. S.]  
the presence of

(The sum expressed in the penalty is usually double the amount of the debt.)

## BOND—AS COUNTER SECURITY.

Know all men, &c. to "year," as above.

Whereas the above named G. H., hath become jointly and severally bound with the above named I. K., as surety for the said I. K., in a certain bond, (or penal bill, &c.) to L. M., bearing date the day of in the year in the penal sum of dollars, conditioned for the payment of dollars, on or before the day of in the year &c.

Now the condition of the above obligation is such, that if the above bound I. K., shall well and truly pay, or cause to be paid unto the said L. M. the said sum of dollars, at the period mentioned in the said bond; and shall also, at all times hereafter, save and keep harmless and indemnified, the said G. H., his executors and administrators, of and concerning the said bond, and all suits to be had, or moved thereupon, then the above obligation to be null and void, or else to remain in full force and virtue.

(Test.)

I. K. [L. S.]  
N. O. [L. S.]

(In this case, the sum expressed in the obligation, should always be sufficient to cover all the loss that could possibly be sustained by the surety.)

## ARBITRATION BOND.

Know all men, &c.

The condition of the above obligation is such, that if the above bounden A B, his heirs, executors, and administrators, and every of them, shall and do, in all things, well and truly stand to, abide, and perform the award, order, arbitrament and determination of and arbitrators indifferently named and elected, as well by and on the part of A B, as by and on the part of the said C D, to arbitrate, determine and award, upon and concerning all manner of actions and causes of action, suits, bills, bonds, covenants, contracts, promises, accounts, sums of money, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever; both in law and equity, at any time heretofore had, moved, brought, commenced, prosecuted, done, suffered, committed, or depending, by, or between, the said parties, provided the award of the said arbitrators be made and reduced to writing, under their hands and seals, ready to be delivered to the said parties in difference, on, or before, the day of ; and if the said arbitrators shall not make their award of and concerning the premises, within the time limited, as aforesaid, then if the said A B, his heirs, executors, and administrators, and every of them, shall and do well and truly stand to, abide, and perform the umpirage, determination and award of such person as the said arbitrators shall indifferently choose as umpire in and concerning the premises, so as the said umpire do make and set down his umpirage and award in writing, under his hand and seal, ready to be delivered to the parties in difference, on, or before, the day of then the above obligation to be null and void to all intents and purposes, or else remain in full force and virtue.

(Test.)

A. B. [L. s.]

## GIFT.

*A Deed of Gift for personal Estate.*

Know all men by these presents, that I, A B, of &c. for and in consideration of the natural love and affection, which I bear to D E, of &c. have given and granted, and, by these presents, do give and grant, unto the said D E, his executors, administrators, and assigns, (here describe the property particularly) to have and to hold the said unto him, the said D E, his executors, administrators, and assigns, for ever; and I,

## APPENDIX.

the said A B, for myself, my heirs, executors, and administrators, the said      unto the said D E, his executors, administrators, and assigns, against the claim of me, the said A B, my executors and administrators, and of every other person whomsoever, shall and will warrant and forever defend.

In testimony whereof, I have hereunto set my hand and seal,  
this      day of

(Test.)

A. B. [L. S.]

### LEASE FOR FIVE YEARS.

*South-Carolina.*

Know all men by these presents, that A B, of      &c. for and in consideration of the covenants and agreements hereinafter contained, and to be performed on the part of D E, of      hath demised and leased, and by these presents, doth demise and lease, unto the said D E, his executors, administrators, and assigns, all that, &c. (here describe the premises,) together with all and singular the rights, members and appurtenances thereunto belonging, or in any wise incident, or appertaining: to have and to hold the said      with the appurtenances unto the said D E, his executors, administrators, and assigns, for the term of five years, to commence from the      day of      ; and that the said A B, doth covenant with the said D E, that he the said D E, his heirs, executors, administrators, and assigns, may peaceably and quietly occupy, hold, possess and enjoy the said      with the appurtenances, for and during the said term of five years, without the lawful let, suit, eviction, or interruption whatsoever, of him, the said A B, or of any other person whomsoever, according to the true intent and meaning of these presents; and the said D E, for himself, his heirs, executors, and administrators, doth covenant with the said A B, his executors and administrators, that he, the said D E, his executors, or administrators, shall pay to the said A B, his certain attorney, executors, administrators, or assigns, the full sum of      dollars, yearly, and every year, for and during the said term of five years; and that he, the said D E, will take all proper and necessary care of the premises, and restore the same to the said A B, in tenantable order, at the expiration of the said term.

In testimony whereof, &c.

(Test.)

A. B. [L. S.]  
C. D. [L. S.]

(To authorize a lessee, or tenant, to clear land, or to cut more timber than is necessary for fuel, repairs, &c. there should be an express covenant to that effect. There should also be express covenants in the case of new buildings, or extraordinary repairs, &c.)

### MARRIAGE ARTICLES.

**Agreement**, before marriage, that the property of the intended wife, should be conveyed to trustees, the profits to be at the disposal of the husband during their joint lives, but the wife to have power to dispose of it by will, notwithstanding her coverture, or (if she survived the husband,) by deed, or otherwise; and to claim no part of the husband's estate.

This indenture, tripartite, made the      day of      between A A, of      of the first part, B B, &c. of the second part, and D D, of      and E E, of      of the third part.

Whereas a marriage is intended to be shortly had and solemnized by and between the said A A and B B; and whereas the said B B is possessed of a considerable personal estate, consisting of (here particularize the property,) and it hath been agreed that the said A A, should, after their said intended marriage had, receive and enjoy, during the joint lives of them, the said A A and B B, the interest and profits of the said personal estate, but that the same, and the profits thereof, after the death of either of them, should be at the sole disposal of the said B B, notwithstanding her coverture; and whereas it hath also been agreed, that, in case the said B B, should, after the said intended marriage had, happen to survive the said A A, she should not have, or claim, any part of the real or personal estate, whereof the said A A should be seized, or possessed, or entitled to, at any time during her coverture, by virtue of her right of dower, or otherwise: Now this indenture witnesseth, that in pursuance of the before recited agreement, and in consideration of the sum of      dollars, to the said B B, in hand paid, by the said D D and E E, the receipt whereof is hereby acknowledged, she, the said B B, by and with the privity, consent, and agreement of the said A A, testified by his being made a party to, and his sealing and delivery of these presents, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, unto the said D D, and E E, their executors, administrators, and assigns, all the said (here mention the property.) To have and to hold the said property unto the said D D and

## APPENDIX.

E E, their executors, administrators and assigns, *in trust, nevertheless,* and for such purposes, and under such provisions and agreements as are hereinafter mentioned; that is to say, *in trust for the said B B and her assigns, until the solemnization of the said intended marriage, and from and after the solemnization of the said intended marriage, then in trust, that they the said D D and E E, their executors, administrators and assigns, shall and do permit the said A A, during the joint lives of the said A A. and B B, his intended wife, to have, receive, take and enjoy all the interest and profits of the said property, to and for his own use and benefit; and from and after the decease of the said A A, then, if the said B B should survive him, in trust, that they the said D D and E E, their executors and administrators, shall assign, transfer and pay over all the said property to the said B B, but if she die before him, then unto such person and persons, and at the time and times, and in such parts and proportions, manner and form, as she the said B B shall, notwithstanding her coverture, by any writing or writings, under her hand and seal, attested by two or more credible witnesses, or by her last will and testament in writing duly executed, direct, limit, or appoint; to the intent, that the same may not be at the disposal, or subject to the control, debts, forfeitures or engagements of the said A A, her intended husband; and in default of such direction, limitation or appointment, then to the heirs of the said B B, or to such person or persons as may be agreed upon, &c. Provided always, and it is hereby expressly agreed and declared by and between all the parties to these presents, that in case the said B B (surviving the said A A, her intended husband,) shall at any time hereafter claim and recover, any part or parcel of the real or personal estate, whereof the said A A or any other person or persons, in trust for him, shall be seized or possessed, or entitled to at any time during the coverture between them, by virtue of any right of dower, distribution, or otherwise, then and in that case, the said D D and E E, their executors and administrators, shall from time to time, and at all times from thenceforth, stand and be possessed of the said property hereby conveyed, in trust for the only benefit of the executors, administrators and assigns of the said A A, any thing herein contained to the contrary thereof notwithstanding. In testimony wherof, &c.*

A. A. [L. s.]  
 B. B. [L. s.]  
 D. D. [L. s.]  
 E. E. [L. s.]

## APPENDIX.

65

### MORTGAGES.

#### *A Mortgage of Land.*

**State of South-Carolina.** }  
District. }

Know all men by these presents, that I, A B of in the state aforesaid, in consideration of dollars, to me in hand paid by C D of have granted, bargained, sold and released, and by these presents do grant, bargain, sell, release and convey unto the said C D, all that, &c. (here describe the premises,) together with all and singular the rights, members, hereditaments and appurtenances to the same belonging, or in any wise incident or appertaining: to have and to hold all and singular the said premises, unto the said C D, his heirs and assigns, for ever: Provided nevertheless, and upon condition, that if the said A B, his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the said C D, his certain attorney, executors, administrators or assigns, the full and just sum of dollars, on the day of at , then, and in such case, and at all times from thenceforth, these presents, and all the estate hereby granted, and every article, clause and sentence herein contained, shall cease, determine, and be utterly void to all intents and purposes, any thing herein contained to the contrary notwithstanding.

Test,

A. B. [L. S.]

E. F.

G. H.

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#### *A Mortgage of personal Property.*

**State of South-Carolina.** }  
District. }

Know all men by these presents, that A B, of in consideration of dollars, to him in hand paid, hath bargained, sold and delivered, and by these presents doth bargain, sell, and in plain and open market, deliver unto C D, of the following property, viz. one negro man slave, named about years of age, one female slave, named about years of age, with her male child, named about years old, and one grey horse, hands high, and years old: to have and to hold all and singular the said property, together with the future issue and increase of the said slave, named , unto the said C D, his executors, administrators and assigns for ever: Pro-

## APPENDIX.

vided nevertheless, and it is expressly agreed between the said parties, that if the said A B, his executors or administrators, shall well and truly pay, or cause to be paid, unto the C D, his certain attorney, executors, administrators or assigns, the full sum of      dollars, on or before the      day of      at      then the above bill of sale, and every article and thing therein contained, shall cease and be utterly void, or else remain in full force and virtue.

A. B. [L. s.]

Test,

E. F.

*Mortgage—Counter Security, by*

**State of South-Carolina,** }  
District. }

Whereas A B, of      at the special instance and request of C D, of      and for the sole debt of the said C D, by obligation bearing date the      day of      did become jointly and severally bound with the said C D, unto E F, in the sum of      dollars, for the payment of      dollars, on the      day of      as by the said obligation and condition thereof, will more fully appear: And whereas, the said A B, and one G H, at the like special instance and request of the said C D, have taken the said C D to bail in an action of trespass, damage laid at      dollars, brought against the said C D, in the court of common pleas, in the district of      at the suit of E F, as by the records remaining in the office of the clerk of the said court will appear: And whereas also, the said A B, and G H, at the request and entreaty of the said C D, have taken the said C D to bail in an action of debt of      dollars, brought in the said court against the said C D, by I J, as by the records of the said court will likewise appear: Now be it known, that the said C D, to the end that the said A B, his heirs, executors and administrators, and every of them; and all the lands, goods and chattels of the said A B, his heirs, executors and administrators, and every of them, from time to time, and at all times hereafter, shall be clearly saved and kept harmless of, and on account of all and singular the bonds, bails, sureties and other charges whatsoever, herein above expressed and recited, and thereof, and therefrom, shall be clearly discharged, at or before such time, as thereto shall be hereafter assigned in these presents, hath given, granted, bargained and sold, and by these presents doth give, grant, bargain sell and release, unto the said A B, his heirs and assigns forever, all

## APPENDIX.

that, &c. [describe the premises, if it be personal property, the words in the preceding form] To have and to hold, all singular, &c. unto the said A B, his heirs and assigns ever: Provided always, that if the said C D, his executors and administrators, shall, on or before the day of pro and cause a clear and absolute acquittal and discharge of said A B, his heirs, executors and administrators, of and all the bonds, bails, and sureships aforesaid, and all charges wherewith the said A B hath charged himself as aforesaid; and shall also, in the mean time, from time to time, and sufficiently save harmless the said A B, his heirs, executors and administrators, and also, the lands, tenements, goods and chattels of the said A B, his heirs, executors, administrators and assigns, wherewith they, or any of them, may be charged as aforesaid; then the grant, bargain and sale of said (property) above made to the said A B, his heirs, to be utterly void and of no effect.—In testimony whereof, said C D, hath hereto set his hand and seal, this day of

Sealed and delivered

in the presence of

C. D. [ ]

K. L.

M. N.

## TRUST.

### A Deed of Trust to secure the payment of Debts.

State of South-Carolina, }  
District. }

Know all men by these presents, that A B, of in order to secure the payment of the following debts, [here mention particularly] and in consideration of the sum of five dollars paid him in hand paid, by C D, of the receipt whereof is here acknowledged, hath granted, bargained and sold, and by these presents, doth grant, bargain and sell unto the said C D that, &c. [here describe the property] together with all and singular the rights, members, hereditaments and appurtenances thereto belonging, or in any wise incident or appertaining have and to hold, all and singular the premises hereby granted unto the said C D, his heirs, executors, administrators and assigns, for ever: in trust nevertheless, that the said C D, as soon as conveniently he can, (or after the day of &c.) having previously advertised the time and place of the sale of the said property, for the space of weeks, in some g

## APPENDIX.

newspaper (or otherwise) published nearest to the residence of the said A B, proceed to sell the same to the highest bidder, for the best price that can be obtained; and out of the monies arising from such sale, in the first place, pay and satisfy all reasonable charges attending the said sale, and then the debts above mentioned, and the residue of the said monies deliver to the said A B, his executors, administrators or assigns, or to such person or persons as he, by writing under his hand, shall appoint; and in default of such appointment, to such person or persons as may be entitled thereto by virtue of the statute for distribution of intestates' estates; and provided also, that if the said A B, shall at any time before the actual sale of the premises by the said C D, according to the true intent and meaning hereof, pay and satisfy, or cause to be paid and satisfied, all and every the above mentioned debts, and give notice thereof to the said C D, then these presents, and every thing therein contained, shall cease, be frustrate and void to all intents and purposes whatsoever. In testimony, &c.

Test,

A. B. [L. S.]

## WILLS.

In the name of God, amen. I, A B, of being of sound and disposing mind and memory, but weak in body, and calling to mind the uncertainty of life, and being desirous to dispose of all such worldly estate as it hath pleased God to bless me with, do make and ordain this my last Will, in manner following, that is to say:

I desire that be immediately sold after my decease, and out of the monies arising therefrom, all my just debts and funeral expenses be paid: and should prove insufficient for the above purpose, then I desire that my executors hereinafter named, may sell (*here describe the property to be sold*); and out of the monies arising therefrom, pay and satisfy such of my just debts as shall remain unpaid out of the sales of After payment of my debts and funeral expenses, I give to my wife E B, one third part of my estate, as well real as personal, for and during the term of her natural life: and, after her decease, I give the same to my children hereinafter mentioned, to be equally divided amongst them, to them and their heirs for ever.

I give to my son J B, (*here insert the legacy agreeable to the intention of the testator*; and be particular in describing the property, and also the quantity and quality of the estate, as, whether for years, for life, or in fee simple—wherever an absolute,

*and unlimited estate is intended to be given, it is always safest to add words of perpetuity, as to him and his heirs forever, &c.)*

I give to my daughter E B, &c.

I give to my son B H, &c.

All the rest of my estate, both real and personal, of what nature or quality soever it may be, not herein before particularly disposed of, I desire may be equally divided amongst my several children herein before named, and I give the same to them, their heirs, executors, administrators and assigns forever.

And lastly, I do constitute and appoint my said wife executrix, and my friends I. T. and W. H. executors, of this my last will and testament, by me heretofore made. In testimony whereof, I have hereunto set my hand and affixed my seal, this day of &c.

A. B. [D. S.]

Signed, sealed, published and declared,  
as and for the last will and testament  
of the above named A B, in the presence of us,

L. M.

W. N.

O. P.

### CODICIL.

Whereas, I A B, of . . . have made and duly executed my last will and testament in writing, bearing date the . . . day of . . . and thereby given and bequeathed to my wife E B, one third part of my estate, as well real as personal, for and during the term of her natural life; now I do hereby revoke and make void the said legacy, and in lieu thereof, do give to my said wife, to be enjoyed by her for the term of her natural life, or widowhood, the plantation whereon I now live, my negroes Tom, Harry, &c. the stocks of horses, cattle, sheep and hogs, usually kept on my said plantation, and all my household and kitchen furniture; and it is my desire, that upon my said wife's censing to be my widow, either by death or marriage, whichever shall first happen, the said plantation shall belong to my son I. B; and I do hereby give the same, after the happening of either of those events, to my said son I. B, his heirs and assigns forever: and it is my further will that the said negroes, and other personal property, shall, at the same time, be equally divided between my daughter E B, and my son H B, and I give the same to them and

## APPENDIX.

their heirs forever: and whereas I have directed, in my said will, that all the rest of my estate, both real and personal, not theirein before particularly disposed of, should be equally divided amongst my several children, I do also revoke the same, and direct that my executrix and executors in my said will named, shall sell the said rest and residue of my estate as soon as conveniently may be after my decease, and out of the proceeds of such sale, to pay to J K, and L M, the sum of dollars, a piece, and the balance to my said several children, equally to be divided among them.

A B [L. s.]

Signed, sealed, published and declared, by the said A B, as and for a codicil to be annexed to his last will and testament, and to be taken as part thereof, in the presence of,

J. C.

T. W.

G. H.

## A NUNCUPATIVE WILL.

The last will of J C, late of &c. deceased, declared by him by word of mouth, the day of (here insert the words spoken by the deceased,) and conclude thus—these are the words spoken by the said J C, in the presence of us, who have hereunto subscribed our names, as witnesses thereto, this day of

[A codicil requires the same number of witnesses, and the same formality in the execution, as a will. "A testament of chattels, written in the testator's own hand, though it has neither his name nor seal to it, nor witnesses present at its publication, is good; provided sufficient proof can be had, that it is his hand writing; and though written in another man's hand, and never signed by the testator, yet, if proved to be according to his instructions, and approved by him, it hath been held a good testament of the personal estate;" 2d Bl. Com. p. 501. A will, or devise of lands, must always be in conformity with the directions of the statute.]

## INDEX.

|                                                                   | Sec. Page.   |
|-------------------------------------------------------------------|--------------|
| <b>ACCESSION,</b>                                                 | 429          |
| <b>ACCESSORY,</b>                                                 | ib.          |
| <b>ACCORD,</b>                                                    | 431          |
| <b>AFFRAY,</b>                                                    | ib.          |
| Warrant, &c.                                                      | 580          |
| <b>AGREEMENT,</b>                                                 |              |
| To purchase lands, &c.                                            | 648          |
| To build a house,                                                 | 649          |
| <b>ALIENS,</b>                                                    | 432          |
| How they may become denizens,                                     | 40           |
| Judge to grant certificate, &c.                                   | 2            |
| Secretary's fee for recording,                                    | 3            |
| Not to vote, nor be eligible to office,                           | 4            |
| When they may hold lands, &c.                                     | 5, 6      41 |
| Alien may take mortgage of real estate for money<br>lent, &c.     | 7            |
| May sue in common pleas, or equity,                               | 8            |
| How they may become citizens of U. States, note,                  | ib.          |
| <b>APOTHECARY,</b>                                                | 9, 10. 385-6 |
| <b>APPRENTICE, (see master and apprentice,)</b>                   |              |
| <b>ARBITRATION,</b>                                               | 483          |
| Award made by majority of arbitrators,                            | 484          |
| Administrators and executors may submit matters<br>of account to, | ib.          |
| Forms of award, &c.                                               | 591-2-3-4    |
| <b>ARREST,</b>                                                    | 434          |
| Arrest and trial by court martial,                                | 557          |
| <b>ARSON,</b>                                                     | 426          |
| <b>ASSAULT AND BATTERY,</b>                                       | 487          |
| Warrant, &c.                                                      | 586          |
| <b>ATTACHMENT,</b>                                                |              |
| Property of absent debtor may be attached,                        | 43           |
| Repleviable,                                                      | 45           |
| Security adjudged insufficient,                                   | 2            |

## INDEX.

|                                                                                                  | Sec. | Pag. |
|--------------------------------------------------------------------------------------------------|------|------|
| Debtor intending to remove his effects,<br>Justice may issue, returnable to,                     | 5    | 45   |
| District court,                                                                                  |      |      |
| Debtor removing out of district, or absconding,<br>Justice may issue, returnable before himself, | 4    |      |
| When merchants, &c. shall be liable to,                                                          | ib.  |      |
| After notice that debtor has absconded, pay-<br>ment shall be made to creditor, &c.              | 5    | 46   |
| Constable may serve to amount of \$ 85 70,                                                       | 6    |      |
| Justice issuing, to take bond, &c.                                                               | 7    |      |
| Slaves &c. attached may be sold by order of the<br>Judge of C. P's.                              | 8    |      |
| Declaration in, when to be filed, and notice,                                                    | 9    | 47   |
| Property attached may be delivered to plaintiff,                                                 | 10   |      |
| Plaintiff to swear to debt, &c.                                                                  | 11   |      |
| Plaintiff may bring suit on note, &c.                                                            | ib.  |      |
| Persons in possession of property attached allow-<br>ed debt due to himself,                     | 12   | 48   |
| In what case it shall be dissolved,                                                              | 13   | 49   |
| Absent debtor appearing and disproving debt, &c.                                                 | 14   |      |
| Proceedings, where property is not replevied,                                                    | 15   |      |
| Judgment, &c. against third person,                                                              | 16   |      |
| Form of proceeding before justice of the peace,                                                  |      | 50   |
|                                                                                                  |      | 586  |

## ATTORNEYS,

|                                                          |         |
|----------------------------------------------------------|---------|
| Application for admission,                               | 59      |
| Who admissible,                                          | 2       |
| Candidate to be rigidly examined,                        | 3       |
| To take oath of allegiance, &c.                          | 51      |
| (Party may do his own business.)                         | 4       |
| Shall account to clerks, &c.                             | 5       |
| Penalty for taking more than lawful fee,                 | 6       |
| — Where demand does not exceed \$ 50 00,                 | 4       |
| May be struck off the roll,                              | 370     |
| Power of attorney to confess judgment, &c. when<br>void, | 7       |
| In what case liable for clerk's fees,                    | 52      |
| To have their fees taxed,                                | 16      |
| Attorney general elected by joint ballot,                | 219     |
| To give bond,                                            | 11      |
| Bond to be approved by governor, &c.                     | 317     |
| Term of office,                                          | 14      |
| To attend courts,                                        | 24      |
| Letters of,                                              | 7       |
| Bill of sale executed by,                                | 201     |
|                                                          | 650-1-2 |
|                                                          | 653     |

## INDEX

6

|                                                                                              | Sec.       | Pa |
|----------------------------------------------------------------------------------------------|------------|----|
| <b>BAIL,</b>                                                                                 |            |    |
| When demandable against executors, &c.                                                       | 4          |    |
| How liable,                                                                                  | 4          |    |
| What offences bailable,                                                                      |            |    |
| No person to be bailed for manslaughter, or felony, unless two justices, (Q. U.) be present, |            |    |
| Duty of justices before bailment,                                                            | 2, 3       |    |
| Justices may be fined for acting improperly,                                                 | 4          |    |
| When defendant in civil action may be held to bail;                                          | 42         | 2  |
| Bond may be assigned,                                                                        | 43         | 2  |
| Appearance entitled to privilege of special bail,                                            | 44         |    |
| In extra cases,                                                                              | 46         |    |
| When bail becomes liable—note,                                                               |            |    |
| Form of a bail piece,                                                                        |            | 5  |
| <b>BAILMENT,</b>                                                                             |            | 4  |
| <b>BANK OF THE STATE OF S. CAROLINA,</b>                                                     |            |    |
| Established,                                                                                 |            |    |
| Incorporated,                                                                                | 2          |    |
| Directors elected,                                                                           | 3          |    |
| Their general powers and duties,                                                             | 4          |    |
| President elected annually,                                                                  | 5          |    |
| Vacancies, how filled,                                                                       | 6          |    |
| Quorum to transact business                                                                  | 7          |    |
| Who not eligible as president or director,                                                   | 8          |    |
| President, &c. to give bond,                                                                 | 9          |    |
| Oath,                                                                                        | 10         |    |
| Directors to preserve regular entries,                                                       | 11         |    |
| To furnish statement to legislature,                                                         | 12         |    |
| Amount of debt to be contracted,                                                             | 13         |    |
| Principal bank and branches to make loans,                                                   | 14         |    |
| Stock vested in president and directors,                                                     | 15, 16, 17 |    |
| Public offices to deposit money in,                                                          | 18         |    |
| Do.                    Do.                    Do.                                            | 8          | 3  |
| Interest due on U. S. stock, considered as capital,                                          | 20         |    |
| President to apply to U. S. for transferable stock,                                          | 21         |    |
| May sell out bank shares, &c.                                                                | 22         |    |
| Treasurer of lower division may issue 6 per cent. stock, &c.                                 | 23         |    |
| Three per cent. stock, &c.                                                                   | 24         |    |
| Lot in Columbia granted to corporation,                                                      | 25         |    |
| President and directors may issue notes,                                                     | 26         |    |
| May issue bills less than one dollar,                                                        | 27         |    |
| Bills and notes negotiable,                                                                  | 28         |    |

## INDEX.

|                                                                                                   | Sec.            | Pag. |
|---------------------------------------------------------------------------------------------------|-----------------|------|
| <b>Presidents and cashiers of branches may sign bills below five dollars,</b>                     | 29              |      |
| <b>Receivable in payments to state,</b>                                                           | 30              | 61   |
| <b>Loans on mortgage apportioned amongst dist's.</b>                                              | 31              |      |
| <b>Persons applying for loan to submit title,</b>                                                 | 32              |      |
| <b>Value of property to be ascertained,</b>                                                       | 33              |      |
| <b>Commissioners to value,</b>                                                                    | 34              |      |
| <b>Form of mortgage,</b>                                                                          | 35              | 62   |
| <b>Mortgage considered of record from date,</b>                                                   | 36              |      |
| <b>Part of loan to be called in annually,</b>                                                     | 37              |      |
| <b>Mortgaged property may be sold,</b>                                                            | 38              |      |
| <b>No officer of, to lend money on usury,</b>                                                     | 39              | 63   |
| <b>Sureties, how liable,</b>                                                                      | 40              |      |
| <b>Directors may borrow money on credit of state,</b>                                             | 41              |      |
| <b>What sums comptroller shall transfer to,</b>                                                   | 42              | 64   |
| <b>All officers to deposit money belonging to individuals in,</b>                                 | 43              |      |
| <b>Comptroller to be furnished with statements, &amp;c.</b>                                       | 44              |      |
| <b>Majority may suspend director,</b>                                                             | 45              |      |
| <b>No other bank to issue bills for less than \$ 5,</b>                                           | 46              |      |
| <b>Officers of, exempted from militia duty, and serving on juries,</b>                            | 47              |      |
| <b>BASTARDY,</b>                                                                                  |                 |      |
| <b>What constitutes,</b>                                                                          | 441             |      |
| <b>Disabilities of bastards,</b>                                                                  | 442             |      |
| <b>Mode of proceeding in cases of,</b>                                                            | 443             |      |
| <b>Woman to declare on oath who is the father,</b>                                                | 2               | 66   |
| <b>Father and mother unable to support child,</b>                                                 | 3               |      |
| <b>No person allowed to give more than one fourth of his estate to bastards and their mother,</b> | 4               |      |
| <b>Forms of proceeding,</b>                                                                       | 445             |      |
| <b>BEEF,</b>                                                                                      |                 |      |
| <b>See inspection of country produce,</b>                                                         | 25, 26, 27, 28, | 50   |
| <b>BILL OF SALE,</b>                                                                              |                 | 653  |
| <b>BILL PENAL,</b>                                                                                |                 | 655  |
| <b>BONDS, NOTES &amp; BILLS OF EXCHANGE,</b>                                                      |                 |      |
| <b>Assignee may bring suit in his own name,</b>                                                   | 67              |      |
| <b>Notes payable to order, or bearer, placed on same footing with bills of exchange,</b>          | 2               | 68   |
| <b>Inland bill to be protested for non-acceptance,</b>                                            | 3, 4            | 69   |
| <b>When protest not necessary,</b>                                                                | 5               |      |
| <b>When bill shall be deemed full payment,</b>                                                    | 6               |      |
| <b>Bill protested to carry interest,</b>                                                          | 7               |      |
| <b>Drawers, or indorsers, may be sued,</b>                                                        | 8               |      |
| <b>Damages on protested bills,</b>                                                                | 9               |      |

## INDEX.

671

|                                                                      | Sec.        | Page. |
|----------------------------------------------------------------------|-------------|-------|
| Difference of exchange ascertained by jury,                          | 10          |       |
| Form of inland bill of exchange,                                     |             | 654   |
| Do. foreign Do. Do.                                                  |             | 655   |
| Form of promissory note,                                             |             | ib.   |
| Form of bond for the payment of money,                               |             | 656   |
| Form of bond as counter security,                                    |             | ib.   |
| Form of arbitration bond,                                            |             | 657   |
| <b>BOTTOMRY,</b>                                                     |             | 442   |
| <b>CATAWBA INDIANS,</b>                                              |             |       |
| May make leases,                                                     |             | 70    |
| Governor to appoint superintendants,                                 | 2           |       |
| Superintendants commissioned for seven years,                        | 3           |       |
| No payment allowed for more than seven years in advance,             | 4           | 71    |
| Lease for ninety nine years, &c. equal to freehold                   | 5           |       |
| Superintendants may maintain actions to try titles, &c.              | 6           |       |
| May distrain for rent,                                               | 7           |       |
| <b>CHAMPERTY,</b>                                                    |             | 7     |
| <b>CHEAT.</b>                                                        |             |       |
| Warrant to apprehend, &c.                                            |             | 603   |
| <b>CHOSE IN ACTION,</b>                                              |             | 445   |
| <b>CHURCH.</b>                                                       |             |       |
| Persons to go armed to,                                              |             | 72    |
| Penalty on church wardens, &c. for not informing against defaulters, | 2           |       |
| Penalty on persons refusing to shew arms, &c.                        | 8           | 73    |
| <b>CLERGY, benefit of,</b>                                           |             |       |
| See sections                                                         | 45, 46, 47, | 97    |
| and do.                                                              | 52, 53,     | 99    |
| <b>CLERKS OF SESSIONS AND COMMON PLEAS.</b>                          |             |       |
| Elected by the people,                                               | 25          | 621   |
| Election contested,                                                  | 26          | 822   |
| Governor may fill vacancies,                                         | 27          |       |
| Judge may appoint,                                                   | 10          | 202   |
| Election of, how regulated,                                          | 28          | 323   |
| When to enter on duties of office,                                   | 29          |       |
| Shall hold office four years, &c.                                    | 24          | 321   |
| May qualify before justice of quorum,                                | 11          | 202   |
| Shall give constant attendance,                                      | 12          |       |
| May appoint deputies,                                                | 9           | 201   |
| Commissions and deputations to be recorded,                          | 14          | 202   |
| To read over minutes,                                                | 15          |       |
| To collect their own fees,                                           | 16          |       |

## INDEX.

|                                                                                                                                                                                 | Sec. | Page. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|
| <b>Penalty for false entry by,</b>                                                                                                                                              | 17   | 215   |
| <b>Not to act as attorneys,</b>                                                                                                                                                 | 13   | 202   |
| <b>Their duty in case of special court,</b>                                                                                                                                     | 90   | 221   |
| <b>May grant commission to examine witness,</b>                                                                                                                                 | 4    | 125   |
| <b>Shall pay over fines into treasury,</b>                                                                                                                                      | 8    | 201   |
| <b>Shall return list of justices to secretary of state;</b>                                                                                                                     | 20   | 264   |
| <b>Shall transmit certified copies of accounts rendered by commissioners of poor, &amp;c.</b>                                                                                   | 22   | 221   |
| <b>Of constitutional courts appointed by judges,</b>                                                                                                                            | 119  | 229   |
| <b>Of Charleston, Georgetown, and Richland districts, to furnish monthly statements of money received in official capacity to directors of Bank of State of South-Carolina,</b> | 19   | 58    |
| <b>COINS, foreign.</b>                                                                                                                                                          |      |       |
| <b>Value of,</b>                                                                                                                                                                |      | 73    |
| <b>Counterfeiting,</b>                                                                                                                                                          |      | 2     |
| <b>Clipping,</b>                                                                                                                                                                |      | 3     |
| <b>COMMISSIONERS IN EQUITY,</b>                                                                                                                                                 |      |       |
| <b>Their general duties,</b>                                                                                                                                                    | 128  | 232   |
| <b>How elected,</b>                                                                                                                                                             | 129  |       |
| <b>To give bond,</b>                                                                                                                                                            | 130  |       |
| <b>Form of bond must be approved,</b>                                                                                                                                           | 15   | 518   |
| <b>Office hours,</b>                                                                                                                                                            | 134  | 235   |
| <b>Term of office,</b>                                                                                                                                                          | 24   | 321   |
| <b>May issue ne exeat,</b>                                                                                                                                                      | 148  | 237   |
| <b>May act as justices of quorum,</b>                                                                                                                                           | 20   | 320   |
| <b>May be appointed receivers,</b>                                                                                                                                              | 31   | 325   |
| <b>Their commissions, &amp;c. in that case,</b>                                                                                                                                 | 32   |       |
| <b>Chargeable with compound int rest,</b>                                                                                                                                       | 33   | 324   |
| <b>Shall keep regular accounts, &amp;c.</b>                                                                                                                                     | 34   |       |
| <b>Shall deposit money in official names,</b>                                                                                                                                   | 35   |       |
| <b>Shall deliver over papers to successors,</b>                                                                                                                                 | 36   |       |
| <b>When to have commission for selling,</b>                                                                                                                                     | 37   | 325   |
| <b>Fee for appointment of guardian,</b>                                                                                                                                         | 38   |       |
| <b>Penalty for neglect, &amp;c.</b>                                                                                                                                             | 39   |       |
| <b>For Charleston district shall execute bond, &amp;c.,</b>                                                                                                                     | 19   | 620   |
| <b>Of Charleston, Georgetown, and Richland districts to make monthly reports of money received in their official capacity to directors of bank,</b>                             | 19   | 58    |
| <b>COMMISSIONERS OF THE POOR,</b>                                                                                                                                               |      |       |
| See title Poor.                                                                                                                                                                 |      |       |
| <b>COMMISSIONERS OF ROADS,</b>                                                                                                                                                  |      |       |
| See title Roads.                                                                                                                                                                |      |       |

Sec. Page.

**COMMON LAW.**

|                                 |            |
|---------------------------------|------------|
| <b>A compendious system of,</b> | <b>429</b> |
| <b>Made of force,</b>           | <b>74</b>  |

**COMPOUNDING OF FELONY,**

446

**COMPTROLLER.**

|                                                                                        |           |            |
|----------------------------------------------------------------------------------------|-----------|------------|
| <b>How elected,</b>                                                                    | <b>16</b> | <b>78</b>  |
| <b>Shall give bond, &amp;c.</b>                                                        | <b>18</b> |            |
| <b>His bond, by whom approved, &amp;c.</b>                                             | <b>18</b> | <b>818</b> |
| <b>Office hours,</b>                                                                   | <b>17</b> |            |
| <b>In what case former treasurer not eligible,</b>                                     | <b>19</b> | <b>78</b>  |
| <b>His general duties,</b>                                                             |           | <b>75</b>  |
| <b>Shall present detailed statement of taxes to legislature,</b>                       | <b>2</b>  |            |
| <b>Shall draw warrants on treasury,</b>                                                | <b>3</b>  |            |
| <b>Shall perform duties of commissioner of public accounts,</b>                        | <b>4</b>  | <b>76</b>  |
| <b>Shall examine accounts sent him by treasurer, and transmit them to legislature,</b> | <b>5</b>  |            |
| <b>Shall compare tax returns,</b>                                                      | <b>6</b>  |            |
| <b>Shall debit sheriff failing to return tax executions,</b>                           | <b>7</b>  |            |
| <b>Shall publish list of commissioners and clerks failing to make returns,</b>         | <b>8</b>  | <b>77</b>  |
| <b>May remove money from Charleston to Columbia,</b>                                   | <b>9</b>  |            |
| <b>Shall examine cash in treasury,</b>                                                 | <b>10</b> |            |
| <b>When to reside at Columbia,</b>                                                     | <b>11</b> |            |
| <b>Shall keep a register of aggregates of taxable property,</b>                        | <b>12</b> |            |
| <b>Shall call on boards of commissioners for accounts, &amp;c.</b>                     | <b>13</b> |            |
| <b>Shall render account of his transactions,</b>                                       | <b>14</b> | <b>78</b>  |
| <b>No right of imparlance in suits by,</b>                                             | <b>15</b> |            |
| <b>Shall not hold office in any bank,</b>                                              | <b>20</b> |            |
| <b>May suspend tax collector,</b>                                                      | <b>31</b> | <b>411</b> |

**CONFUSION OF GOODS,**

446

**CONSPIRACY,**

ib.

**Do.****72****CONSTABLES.**

|                                                       |           |            |
|-------------------------------------------------------|-----------|------------|
| <b>To be appointed by judge of common pleas,</b>      | <b>93</b> | <b>222</b> |
| <b>To execute process issued by justice of peace,</b> | <b>12</b> | <b>262</b> |
| <b>Sales by,</b>                                      | <b>13</b> |            |
| <b>To execute slaves,</b>                             | <b>42</b> | <b>296</b> |
| <b>May serve attachment to amount of \$ 85 70,</b>    | <b>7</b>  | <b>46</b>  |
| <b>See title Arrest.</b>                              |           |            |

## INDEX.

|                                                         | Sec.   | Page. |
|---------------------------------------------------------|--------|-------|
| <b>CONSTITUTION OF THE U. STATES,</b>                   |        | 14    |
| <b>CONSTITUTION OF STATE S. CAROLINA,</b>               |        | 27    |
| <b>CONSTRUCTION,</b>                                    |        | 446   |
| <b>CONTRACT,</b>                                        |        | 449   |
| <b>CONVEYANCES.</b>                                     |        |       |
| Of lands to be in writing, signed, sealed and recorded, |        | 78    |
| Form of deed,                                           | 2      |       |
| Renunciation of dower,                                  | 3      |       |
| Release of inheritance of feme covert,                  | 4      | 81    |
| Good without attornment of tenant,                      | 5      |       |
| Grant for land good without great seal,                 | 6      |       |
| Shall not be set aside for informality,                 | 7      | 82    |
| <b>'CONVICTION BEFORE JUSTICE OF PEACE.</b>             |        | 605   |
| <b>COPARCENERS,</b>                                     |        | 454   |
| <b>CORONER.</b>                                         |        |       |
| His oath,                                               |        | 82    |
| His duty, when informed of untimely death,              | 2      |       |
| Penalty for not attending as juror,                     | 3      | 83    |
| Shall swear twelve, or more,                            | 4      |       |
| His charge to jury,                                     | 5      |       |
| Shall summon witnesses,                                 | 6      |       |
| Form of inquisition,                                    |        | 84    |
| Shall return inquisition,                               | 7      |       |
| Penalty for burying without notice to,                  | 8      | 85    |
| Person dying of rattle snake bite,                      | 9      |       |
| Shall execute process against sheriff,                  | 10     |       |
| If none, justice of the peace shall act,                | 11     |       |
| His fees,                                               | 12     |       |
| Do.                                                     |        | 361   |
| Appropriation of fines,                                 | 13     | 85    |
| If sued may plead general issue, &c.                    | 14     | 86    |
| Vacancy in office, how filled,                          | 15, 16 |       |
| Shall give bond,                                        |        | 17    |
| Shall continue in office four years, &c.                |        | 18    |
| Shall not act as gaoler,                                |        | 19    |
| May commit prisoners to gaol,                           | 20     |       |
| Forms of proceeding,                                    |        | 608   |
| <b>CORPORATIONS,</b>                                    |        | 454   |
| May sue their own members,                              | 2      | 87    |
| Not to issue bills in nature of circulating medium,     | 2      |       |

# INDEX.

475

| Sec. | Page. |
|------|-------|
|      | 457   |

## **COURTS,**

See title *Judicature.*

## **COURTS MARTIAL.**

|                                               |     |
|-----------------------------------------------|-----|
| Their institution, &c.                        | 563 |
| Rank of members belonging to different corps, | 555 |
| Effect of suspension by,                      | 556 |
| Evidence taken down in writing,               | ib. |
| Judgment,                                     | 558 |
| Courts of inquiry,                            | 574 |
| Order for holding court martial,              | 575 |
| — for holding court of inquiry                | ib. |
| Regimental court of inquiry,                  | 576 |
| Manner of sitting at a court martial,         | ib. |
| Record of proceedings of,                     | 577 |
| Usual manner of approving proceedings,        | 579 |

## **CRIMES AND MISDEMEANORS,**

|                                                                                                                                                     |      |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------|-----|
| Rape,                                                                                                                                               | 1, 2 | 87  |
| Murder,                                                                                                                                             | 3    |     |
| Robbing church,                                                                                                                                     | 4    |     |
| — dwelling house,                                                                                                                                   | 5    |     |
| — booth, or tent,                                                                                                                                   | 6    | 88. |
| — in highway,                                                                                                                                       | 7    |     |
| Burglary,                                                                                                                                           | 8    |     |
| Do.                                                                                                                                                 |      | 442 |
| Stealing from dwelling house, in day time,                                                                                                          | 9    | 88  |
| Burning frames of timber, &c.                                                                                                                       | 10   |     |
| Stealing from the person of another,                                                                                                                | 11   |     |
| Stabbing, &c.                                                                                                                                       | 12   |     |
| Cutting out tongue, &c.                                                                                                                             | 13   |     |
| Robbing any person in dwelling house, or stealing therefrom, owner being within, or advising it to be done, or advising another to commit burglary, | 15   | 89  |
| Killing by poison,                                                                                                                                  | 14   |     |
| Stealing bond, note, &c.                                                                                                                            | 16   |     |
| Stealing from lodgings,                                                                                                                             | 17   |     |
| Receiving stolen goods,                                                                                                                             | 18   |     |
| Polygamy,                                                                                                                                           | 19   | 90  |
| Buggery,                                                                                                                                            | 20   |     |
| Horse stealing,                                                                                                                                     | 21   |     |
| Stealing of slaves,                                                                                                                                 | 22   |     |
| Insurrection of slaves,                                                                                                                             | 23   | 91  |
| Forging deed, will, &c.                                                                                                                             | 24   |     |
| Uttering, as true, any forged deed, &c.                                                                                                             | 25   |     |
| Counterfeiting, or altering words, &c.                                                                                                              | 26   | 92  |

## INDEX.

|                                                                                  | Sec.       | Page. |
|----------------------------------------------------------------------------------|------------|-------|
| <b>Counterfeiting tobacco note, &amp;c.</b>                                      | 27         |       |
| <b>Counterfeiting hawker's license,</b>                                          | 28         |       |
| <b>Forging servant's certificate,</b>                                            | 29         | 93    |
| <b>Seduction of slaves,</b>                                                      | 30         |       |
| <b>Speaking, or publishing inflammatory words,<br/>tending to seduce slaves,</b> | 31         |       |
| <b>Prison breach,</b>                                                            | 32         |       |
| <b>Do.</b>                                                                       |            | 539   |
| <b>Stealing bull, &amp;c.</b>                                                    | 33         | 93    |
| <b>Stealing sheep, &amp;c.</b>                                                   | 34         | 94    |
| <b>Branding, or disfiguring horse, &amp;c.</b>                                   | 35         |       |
| <b>Branding, or disfiguring sheep, &amp;c.</b>                                   | 36         |       |
| <b>Maiming horse, &amp;c. in night time,</b>                                     | 37         | 95    |
| <b>Burning carts, &amp;c.</b>                                                    | 39         |       |
| <b>Burning rick of corn, &amp;c.</b>                                             | 40         |       |
| <b>Injuring works of Santee canal,</b>                                           | 41         | 96    |
| <b>Persons apprehending burglars rewarded,</b>                                   | 42         |       |
| <b>Persons endeavoring to apprehend burglars and<br/>disabled,</b>               | 43         |       |
| <b>Costs in prosecutions for,</b>                                                | 44, 45, 46 |       |
| <b>Indemnity to persons making distress for costs,</b>                           | 57         | 100   |
| <b>For precedents, see Appendix,</b>                                             | 580, &c.   |       |
| <b>DAMS.</b>                                                                     |            |       |
| <b>When to be opened,</b>                                                        |            | 101   |
| <b>How to proceed when they are not opened,</b>                                  | 2, 3       |       |
| <b>Penalty for replacing obstructions,</b>                                       | 4          | 102   |
| <b>When not sufficiently strong,</b>                                             | 5          | 103   |
| <b>Compensation to freeholders, and penalty for not<br/>attending,</b>           | 6          |       |
| <b>Penalty for maliciously cutting out heads of<br/>ponds, &amp;c.</b>           | 7          |       |
| <b>Forms of proceeding,</b>                                                      |            | 612   |
| <b>DEBT,</b>                                                                     |            | 460   |
| <b>Forms of proceeding before justice of peace,</b>                              |            | 608   |
| <b>DEED,</b>                                                                     |            | 461   |
| <b>Of bargain and sale,</b>                                                      |            | 653   |
| <b>DISCOUNTS,</b>                                                                |            | 104   |
| <b>DISTRESS,</b>                                                                 |            | 468   |
| <b>DOWER,</b>                                                                    |            | 465   |
| <b>Admeasurement of,</b>                                                         | 1, 2, 3    | 105   |
| <b>Widow taking distributive share barred,</b>                                   | 4          | 106   |
| <b>Jointure in lieu of,</b>                                                      | 5          |       |
| <b>Judge may grant ded. pot. to take renunciation of,</b>                        | 7          | 107   |

**INDEX**

677

|                                                                                          | Sec.   | Page. |
|------------------------------------------------------------------------------------------|--------|-------|
| Wife convicted of leaving her husband, &c.                                               | 6      |       |
| Renunciation of,                                                                         | 3      | 80    |
| <b>DRUNKENNESS AND PROFANE SWEARING.</b>                                                 |        |       |
| Tippling in disorderly manner,                                                           |        | 107   |
| Profane swearing in presence of justice,                                                 | 2      |       |
| Penalty on justice for neglect of duty,                                                  | 3      | 108   |
| Forms of conviction, &c.                                                                 |        | 642   |
| <b>DUELLING,</b>                                                                         |        | 108   |
| <b>DURESS,</b>                                                                           |        | 465   |
| <b>ELECTIONS.</b>                                                                        |        |       |
| Writs of, to be issued by governor,                                                      |        | 109   |
| Death, or removal, of manager,                                                           | 2      |       |
| How conducted,                                                                           | 3      |       |
| - When to begin, &c.                                                                     | 4      |       |
| Managers to give public notice of persons elected,                                       | 5      | 110   |
| Penalty for neglect,                                                                     | 6      |       |
| Penalty for improper conduct in managers of,                                             | 7      |       |
| Penalty for violating freedom of,                                                        | 8      |       |
| Places of, fixed by legislature,                                                         | 9      | 111   |
| Privilege of voters,                                                                     | 10     |       |
| Person elected to attend,                                                                | 11     |       |
| Penalty for not attending,                                                               | 12, 13 | 112   |
| Penalty on cashier for neglect,                                                          | 14     |       |
| Of representatives in congress,                                                          | 15     |       |
| Managers to make return within twenty days,                                              | 16     |       |
| Returns to be publicly opened,                                                           | 17     | 113   |
| Managers to count ballots, &c.                                                           | 18     | 114   |
| Person returned for two, or more districts, or two persons having equal number of votes, | 19     |       |
| Of electors of president and vice-president of U. States—note g.                         |        |       |
| <b>EMBRACERY,</b>                                                                        |        | 115   |
| <b>EQUITY,</b>                                                                           |        | 466   |
| <b>ESCAPE.</b>                                                                           |        |       |
| What deemed an,                                                                          | 1, 2   | 115   |
| Against whom plaintiff shall proceed,                                                    | 3      | 116   |
| Retaking given in evidence,                                                              | 4      |       |
| No judgment for, unless through negligence, &c.                                          | 5      |       |
| Justice may grant warrant to re-take,                                                    | 6      |       |
| Remedy for b. il.                                                                        | 7      | 117   |
| Creditor under decree in equity to have same remedy as judgment creditor,                | 8      | 118   |
| Penalty on sheriff for taking reward to permit,                                          | 9      |       |

## INDEX.

|                                                                                   | Sec.       | Page. |
|-----------------------------------------------------------------------------------|------------|-------|
| Creditor may proceed to re-take, or sue for the execution,                        | 10         |       |
| Form of warrant in civil case,                                                    |            | 616   |
| — in criminal case,                                                               |            | 617   |
| <b>ESCHEATS,</b>                                                                  |            | 471   |
| Escheators appointed,                                                             |            | 118   |
| How they shall proceed,                                                           | 2, 3, 4, 5 | 119   |
| Claimant shall be heard, &c.                                                      | 6          | 120   |
| State not barred by possession,                                                   | 7          |       |
| Of personal estate,                                                               | 8          | 121   |
| Rights of persons under disabilities saved,                                       | 9          |       |
| Compensation allowed escheator,                                                   | 10         |       |
| Penalty for misconduct,                                                           | 11         |       |
| No escheator to purchase escheated property,                                      | 12         |       |
| No member of the legislature to act as escheator,                                 | 13         | 122   |
| <b>ESTATE, in fee simple,</b>                                                     |            | 471   |
| — for life,                                                                       |            | 472   |
| — for years,                                                                      |            | 475   |
| — at sufferance,                                                                  |            | 476   |
| — on condition expressed,                                                         |            | 476   |
| — on condition implied,                                                           |            | 478   |
| — in remainder,                                                                   |            | 479   |
| — in reversion,                                                                   |            | 480   |
| — in joint tenancy,                                                               |            | 481   |
| — in common,                                                                      |            | ib.   |
| <b>ESTRAYS,</b>                                                                   |            | 482   |
| Shall be advertised, &c.                                                          |            |       |
| Where no owner appears,                                                           | 2          |       |
| Horses, &c. to be advertized in Gazette,                                          | 3          | 123   |
| Magistrate's fees,                                                                | 4          |       |
| May be put to work,                                                               | 5          |       |
| Penalty for not advertising, &c.                                                  | 6          |       |
| Stone horse may be gelded,                                                        | 8          | 124   |
| Form of warrant, &c.                                                              |            | 617   |
| <b>EVIDENCE.</b>                                                                  |            | 482   |
| Penalty on witness for not attending,                                             |            |       |
| His costs,                                                                        | 2          |       |
| Penalty for not attending court of sessions,                                      | 3          |       |
| Clerk may grant commission to examine witnesses, out of the state, or infirm, &c. | 4          | 125   |
| Commission to examine witness de bene esse,                                       | 5          |       |
| Proceedings under commission,                                                     | 6          |       |
| Commission issued from court of any other state,                                  | 7          | 127   |
| Witness being in prison,                                                          | 8          |       |

|                                                                                  | Sec. | Page. |
|----------------------------------------------------------------------------------|------|-------|
| <b>Shop book,</b>                                                                | 9    |       |
| Copy from treasurer's book, &c.                                                  | 10   |       |
| Certified copies of grants, &c.                                                  | 11   |       |
| Attested copies of records,                                                      | 12   | 128   |
| Solemn affirmation,                                                              | 13   | 129   |
| <b>EXAMINATION OF FELON,</b>                                                     |      | 618   |
| <b>EXCHANGE,</b>                                                                 |      | 493   |
| See title Bonds, Notes, and Bills of Exchange.                                   |      |       |
| <b>EXECUTIONS.</b>                                                               |      |       |
| <b>May issue for fines,</b>                                                      | 5    | 144   |
| Bind property from delivery to sheriff,                                          | 14   | 148   |
| When to issue,                                                                   | 41   | 209   |
| Whence to be issued,                                                             | 73   | 218   |
| To be returned by sheriffs,                                                      | 74   |       |
| Debtor dying in execution, new one may issue,                                    | 77   | 219   |
| May be issued at any time within three years after judgment entered up,          | 8    | 195   |
| <b>EXECUTORS AND ADMINISTRATORS,</b>                                             |      | 497   |
| Entitled to certificate of probate, &c.                                          |      | 129   |
| Administration with will annexed,                                                | 2    |       |
| Executors, &c. dying before full administration,                                 | 3    |       |
| Who entitled to administration,                                                  | 4    | 130   |
| Creditor administering to be trustee,                                            | 5    |       |
| Where will is lost,                                                              | 6    |       |
| Ordinaries appointed executors,                                                  | 7    | 131   |
| Debtor appointed executor,                                                       | 8    |       |
| Oath of administrator, will annexed,                                             | 9    |       |
| Oath, &c. of administrator, in case of intestacy,                                | 10   | 132   |
| Estate to be inventoried,                                                        | 11   | 133   |
| Appraiser's allowed one dollar per day,                                          | 12   |       |
| Estate to be produced to appraisers,                                             | 13   | 134   |
| Appraiser's oath,                                                                | 14   |       |
| No executor to take estate at appraisement,                                      | 15   |       |
| Executor, &c. failing to insert any article in appraisement,                     | 16   |       |
| Order, in which debts shall be paid,                                             | 17   |       |
| Executor to give three weeks' notice.                                            | 18   | 135   |
| Shall account annually to ordinary,                                              | 19   |       |
| Authorized to sell lands,                                                        | 20   |       |
| When liable for insufficient security,                                           | 21   | 136   |
| Ordinary may order sale of personal estate,                                      | 22   |       |
| No administrator compellable to account otherwise than by inventory, except, &c. | 23   |       |
| Actions of trespass by, and against, exec'rs. &c.                                | 24   |       |

|                                                                                         | Sec. | Page. |
|-----------------------------------------------------------------------------------------|------|-------|
| No distribution of estate, 'till after one year,                                        | 25   | 1     |
| Person dying after first of March, &c.                                                  | 26   | 137   |
| Debt on open account due from person not a citizen of this state, to rank as specialty; | 27   | 1     |
| Executor of executor to represent first testator,                                       | 28   | 1     |
| Executor, or administrator, of rightful executors, &c. chargeable with waste,           | 29   | 1     |
| Allowance to executors, &c.                                                             | 30   | 1     |
| Commissions divided,                                                                    | 31   | 158   |
| Compensation for extra trouble,                                                         | 32   | 159   |
| Sureties for administrators conceiving them selves in danger,                           | 33   | 1     |
| Executor of his own wrong,                                                              | 34   | 1     |
| Executor, or administrator of executors, &c. tort,                                      | 35   | 139   |
| May submit matters of account to arbitration,                                           | 36   | 131   |
| <b>EXECUTORY DEVISE,</b>                                                                |      | 499   |
| <b>EXTORTION,</b>                                                                       |      | 500   |
| <b>FALSE IMPRISONMENT,</b>                                                              |      | ib.   |
| <b>FEES.</b>                                                                            |      | ib.   |
| See title Salaries and Fees.                                                            |      |       |
| <b>FEME COVERT.</b>                                                                     |      | ib.   |
| May appoint attorney,                                                                   | 139  |       |
| Being sole trader,                                                                      |      |       |
| See title Marriage.                                                                     |      |       |
| <b>FENCES.</b>                                                                          |      | ib.   |
| To be six feet high,                                                                    | 140  |       |
| Penalty for setting stakes within,                                                      | 140  |       |
| Damages in cases of trespass,                                                           | 141  |       |
| Throwing down, &c. in night time,                                                       | 141  |       |
| <b>FERRIES AND TOLL BRIDGES.</b>                                                        |      | ib.   |
| Owners of, to keep banks in good repair                                                 | 140  |       |
| Rates to be fixed up,                                                                   | 140  |       |
| Penalty for detaining passengers,                                                       | 141  |       |
| No charge for fording rivers, &c.                                                       | 141  |       |
| No owner of, to obstruct fording place,                                                 | 141  |       |
| Distance between,                                                                       | 142  |       |
| Owners to keep good boats, &c.                                                          | 142  |       |
| Who exempt from paying toll,                                                            | 142  |       |
| Penalty for not attending to exemptions,                                                | 142  |       |
| for exacting payments from them,                                                        | 142  |       |
| Owners of private ferries to put over exemptions,                                       | 142  |       |

## INDEX

681

|                                                                                                    | Sec. | Page |
|----------------------------------------------------------------------------------------------------|------|------|
| <b>No petition for, received by legislature without previous notice to commissioners of roads,</b> | 25   | 356  |

### **FINES.**

|                                                        |      |
|--------------------------------------------------------|------|
| <b>When to be accounted for,</b>                       | 143. |
| <b>Not appropriated to be paid into treasury,</b>      | 2    |
| <b>Clerks to pay over fines into treasury, &amp;c.</b> | 3    |
| <b>Duties of attorney-general, solicitor, &amp;c.</b>  | 4    |
| <b>Execution may issue for,</b>                        | 5    |

### **FORCIBLE ENTRY AND DETAINER.**

|                                                      |     |
|------------------------------------------------------|-----|
| <b>None to enter lands, but in peaceable manner,</b> | ib. |
| <b>Justices to proceed against offenders,</b>        | 2   |
| <b>Tenant for years entitled to remedy,</b>          | 3   |
| <b>Proceeding before justice of peace,</b>           | 620 |

### **FORGERY.**

|                                    |    |    |
|------------------------------------|----|----|
| <b>Forging deed, will, &amp;c.</b> | 24 | 91 |
| <b>— servant's certificate,</b>    | 29 | 93 |

### **FRAUDS.**

|                                                                                            |      |
|--------------------------------------------------------------------------------------------|------|
| <b>No person chargeable for debt, default, &amp;c. of another, except in writing,</b>      | 145. |
| <b>Contract on consideration of marriage, for sale of lands, &amp;c. to be in writing,</b> | ib.  |
| <b>Gifts, &amp;c. to defraud creditors, void,</b>                                          | 2    |
| <b>Forfeiture of party to fraudulent gift, &amp;c.</b>                                     | 3    |
| <b>Lease of lands, &amp;c. to be in writing,</b>                                           | 4    |
| <b>Lease for more than one year to be recorded,</b>                                        | 5    |
| <b>Declaration of trust void, unless in writing,</b>                                       | 6    |
| <b>Assignment of trust to be in writing,</b>                                               | 7    |
| <b>Wills, &amp;c. to defraud creditors, void,</b>                                          | 8    |
| <b>Heirs claiming lands liable to amount descended,</b>                                    | 9    |
| <b>Judgment against him shall be for debt, &amp;c.</b>                                     | 10   |
| <b>Devisee chargeable as heir,</b>                                                         | 11   |
| <b>Estates in trust liable for debts of persons for whose benefit they are helden,</b>     | 12   |
| <b>Judgment entered up binds lands,</b>                                                    | 13   |
| <b>Executions bind from delivery to sheriff,</b>                                           | 14   |
| <b>Recognizance binds from time of recording,</b>                                          | 15   |
| <b>Contract for sale of goods, when good,</b>                                              | 16   |

### **FREE SCHOOLS.**

|                                           |     |
|-------------------------------------------|-----|
| <b>Established,</b>                       | ib. |
| <b>Course of instruction in,</b>          | 2   |
| <b>Every citizen entitled to send to,</b> | 3   |
| <b>Appropriation for support of,</b>      | 4   |
| <b>Commissioners to be appointed,</b>     | 5   |
| <b>Their continuance in office,</b>       | 6   |

|                                                                                                  | Sec.  | Page. |
|--------------------------------------------------------------------------------------------------|-------|-------|
| Their powers,                                                                                    | 7     | 150   |
| May regulate number of schools,                                                                  | 8     |       |
| Their meetings—vacancies, how filled,                                                            | 9     |       |
| Secretary shall keep a journal,                                                                  | 10    |       |
| Master may be employed for any term,                                                             | 11    |       |
| Commissioners shall report to legislature,                                                       | 12    |       |
| Shall designate schools, and report to comptrol'r.                                               | 13    | 151   |
| May remove schools,                                                                              | 14    |       |
| May combine public with private funds,                                                           | 15    |       |
| Number of commissioners,                                                                         | 16    |       |
| <b>GAMING.</b>                                                                                   |       |       |
| Penalty for enticing any person to play at cards, &c.                                            | 152   |       |
| Justice of peace may proceed against offenders,                                                  | 2     |       |
| Keepers of gambling tables, &c. deemed vagrants, &c.                                             | 8, 9  | 153-6 |
| Notes, &c. in consideration of money won at, void,                                               | 4     | 153   |
| Lands conveyed in consideration of gambling debt to devolve upon heirs,                          | 5     | 154   |
| Penalty for cheating at cards, or winning above \$ 42 85, at one sitting,                        | 6     |       |
| Penalty for assaulting another on account of gambling,                                           | 7     | 155   |
| Penalty for gambling,                                                                            | 8, 10 |       |
| License to retail spirits not to be granted to persons convicted of being concerned in gambling, | 11    | 156   |
| Money betted, or staked, forfeited,                                                              | 12    |       |
| Closed doors, where gambling is practised, may be broken open.                                   | 16    |       |
| Person subject to the penalties for, exonerated on giving evidence, &c.                          | 14    |       |
| Proceedings before justice of peace,                                                             | 622   |       |
| <b>GAOLS,</b>                                                                                    |       |       |
| See Sheriffs.                                                                                    | 500   |       |
| <b>GIFT,</b>                                                                                     |       |       |
| A deed for personal estate,                                                                      | 501   |       |
| <b>GOODS, STOLEN.</b>                                                                            |       |       |
| To be restored,                                                                                  | 44    | 97    |
| <b>GRIST-MILLS,</b>                                                                              |       |       |
| Forms of proceeding,                                                                             | 157   |       |
| <b>GUARDIAN AND WARD,</b>                                                                        |       |       |
| Guardian may be appointed by deed, or will,                                                      | 501   | 157   |
| May take estate into possession,                                                                 | 2     | 158   |

**INDEX.**

(88)

|                                                                                             | Sec. | Page. |
|---------------------------------------------------------------------------------------------|------|-------|
| <b>When to apply for partition,</b>                                                         | 3    |       |
| <b>Shall render account to secretary's office,</b>                                          | 4    |       |
| <b>Commissions,</b>                                                                         | 5    |       |
| <b>Allowance for extra trouble,</b>                                                         | 6    |       |
| <b>When guardian to be adjudged a trespasser,</b>                                           | 7    |       |
| <b>How to ascertain death of minor, &amp;c. having left estate, &amp;c.</b>                 | 8, 9 |       |
| <b>Judge may appoint guardian,</b>                                                          | 82   | 220   |
| <b>HABEAS CORPUS.</b>                                                                       |      |       |
| <b>Writ of, when to be granted,</b>                                                         |      | 161   |
| <b>When to be returned,</b>                                                                 | 2    | 162   |
| <b>Judge, or justices, may discharge prisoner,</b>                                          | 3    |       |
| <b>No prisoner for debt to be discharged,</b>                                               | 4    | 163   |
| <b>Penalty for refusing writ,</b>                                                           | 5    |       |
| <b>Penalty for not returning writ,</b>                                                      | 6    |       |
| <b>Person delivered not to be re-committed for same offence,</b>                            | 7    |       |
| <b>By what authority prisoner may be removed,</b>                                           | 8    | 164   |
| <b>In actions for offences against this act, defendant may plead general issue, &amp;c.</b> | 9    |       |
| <b>Penalty for wilful neglect in execution of Habeas Corpus act,</b>                        | 10   |       |
| <b>Gaoler, &amp;c. to pay obedience to writ of,</b>                                         | 11   |       |
| <b>HAWKERS AND PEDLARS.</b>                                                                 |      |       |
| <b>Not to sell without license,</b>                                                         |      | 165   |
| <b>Penalty for selling without license,</b>                                                 | 2    |       |
| <b>Only one to sell under one license,</b>                                                  | 3    |       |
| <b>Treasurer to grant license,</b>                                                          | 4    |       |
| <b>Not to sell to slave, &amp;c. without leave,</b>                                         | 5    |       |
| <b>Penalty for not producing license,</b>                                                   | 6    | 166   |
| <b>May be stopped 'till they produce license,</b>                                           | 7    |       |
| <b>Penalty on constable, &amp;c. failing in duty in the execution of this act,</b>          | 8    |       |
| <b>Any person may sell at public market, or fair without license,</b>                       | 9    |       |
| <b>Protection of person executing act,</b>                                                  | 10   |       |
| <b>HIRING AND BORROWING,</b>                                                                |      |       |
|                                                                                             |      | 502   |
| <b>HOMICIDE,</b>                                                                            |      |       |
|                                                                                             |      | 503   |
| <b>HORSE STEALING,</b>                                                                      |      |       |
|                                                                                             | 21   | 90    |
| <b>HUNTING.</b>                                                                             |      |       |
| <b>With fire, in the night, prohibited,</b>                                                 |      |       |
| <b>Person killing horse, &amp;c. liable to action,</b>                                      | 2    |       |
| <b>Justice to proceed against offenders,</b>                                                | 3    |       |

|                                                                                                                                 | Sec. | Page. |
|---------------------------------------------------------------------------------------------------------------------------------|------|-------|
| Oath of freemen,                                                                                                                | 4    |       |
| When not to kill does, or bucks,                                                                                                | 5, 6 |       |
| Slave offending may be whipped,                                                                                                 | 7    | 168   |
| No person to hunt more than seven miles from home without leave,                                                                | 8    |       |
| No person to put fire to grass, &c.                                                                                             | 9    |       |
| <b>IGNORANCE,</b>                                                                                                               |      | 510   |
| <b>INDICTABLE, what is,</b>                                                                                                     |      | ib.   |
| <b>INFANCY,</b>                                                                                                                 |      | 511   |
| Information of a witness,                                                                                                       |      | 619   |
| <b>INSOLVENT DEBTORS.</b>                                                                                                       |      |       |
| Disposed to surrender effects may petition for discharge, &c.                                                                   | 169  |       |
| Not to be arrested for debt previously contracted in less than twelve months after discharge                                    | 2    | 171   |
| Petitioner not allowed to plead act of limitation to debt previously contracted,                                                | 3    |       |
| Court having reason to suspect fraud may re-commit,                                                                             | 4    | 172   |
| Who liable to sheriff for fees, &c.                                                                                             | 5    |       |
| Creditor unwilling to accept dividend may prove quantum of demand, &c.                                                          | 6    | 173   |
| Debt concealed by, to be paid to assignees, &c.                                                                                 | 7    |       |
| Assignees to be trustees for other creditors,                                                                                   | 8    |       |
| To assist assignees in recovery of debt,                                                                                        | 9    | 174   |
| Person making discovery of debtor's estate not comprised in schedule allowed 50 per cent.                                       | 10   |       |
| Mortgagors, &c. to render account of sums actually due from,                                                                    | 11   |       |
| Unable to attend, shall make return, &c.                                                                                        | 12   | 176   |
| When such claim shall be deemed fraudulent,                                                                                     | 13   |       |
| In what cases insolvent debtor shall not be entitled to relief,                                                                 | 14   |       |
| Petitioner rendering false schedule not entitled to relief, and deemed guilty of perjury,                                       | 16   | 177   |
| When associate justice shall proceed, &c.                                                                                       | 15   |       |
| In what case, three months confinement shall be dispensed with,                                                                 | 17   |       |
| May surrender effects to satisfy execution under which they are confined, and be liberated;                                     | 18   | 178   |
| Property mentioned in schedule must be visible, &c.                                                                             | 19   |       |
| In what cases prisoner shall not be discharged,                                                                                 | 20   | 179   |
| Creditor may liberate debtor with his consent, and shall not thereby be incapacitated from taking out other writs of execution, | 21   | 180   |

**INSPECTION OF COUNTRY PRODUCE.**

|                                                                                       | Sec.   | Page. |
|---------------------------------------------------------------------------------------|--------|-------|
| Tobacco to be inspected,                                                              | 180    |       |
| Found merchantable to be stored,                                                      | 2      | 181   |
| To be classed,                                                                        | 3      |       |
| Store-house to be provided for loose tobacco,<br>which shall be prized,               | 4      |       |
| Prizes, &c. to be provided,                                                           | 5      |       |
| Warehouses and necessary implements in the<br>country,                                | 6      | 182   |
| Owners of lands neglecting to erect buildings, &c.                                    | 7      |       |
| Penalty for taking more than lawful fees,                                             | 8      | 183   |
| Tobacco hogshead to be made of seasoned tim-<br>ber, branded, &c.                     | 9      |       |
| Tobacco reduced below 950 pounds,                                                     | 10     |       |
| When tobacco is delivered out, notes shall be<br>taken up, &c.                        | 11     | 184   |
| Storage of tobacco,                                                                   | 12     |       |
| Commissioners to appoint inspectors,                                                  | 13     |       |
| Inspectors to give bond, &c..                                                         | 14     |       |
| Inspector's oath,                                                                     | 15     |       |
| Hours of attendance,                                                                  | 16     | 185   |
| Inspector's salaries in the country,                                                  | 17     |       |
| Storage in Charleston,                                                                | 18     |       |
| Penalty for changing tobacco,                                                         | 19     |       |
| Commissioners of ware houses to transmit num-<br>ber of hogsheads to treasurers,      | 20     |       |
| Surplus money to be paid by inspectors to com-<br>missioners,                         | 21     |       |
| Inspectors shall number hogsheads, and deliver<br>notes to owners,                    | 22     | 186   |
| When tobacco may be sold by inspectors,                                               | 23     |       |
| Pickers to be appointed,                                                              | 24     |       |
| Penalty for selling tar, &c. without brand,                                           | 25     |       |
| Contents of barrels of pitch, &c.                                                     | 26     | 187   |
| Penalty for barreling beef not previously penned,                                     | 27     |       |
| Barrels for packing beef, &c. to be made of sea-<br>soned timber,                     | 28     |       |
| Penalty for exporting tar, &c. unless it be mark-<br>ed by public packer,             | 29, 30 |       |
| Packer suspecting fraud,                                                              | 31, 32 |       |
| Packer's fees, &c.,                                                                   | 33     | 186   |
| Rice found to be fraudulent,                                                          | 34     |       |
| Overseer accountable for quality of rice, &c.                                         | 35     | 189   |
| Dimensions of stores, &c.                                                             | 36     | 190   |
| No inspection at Georgetown, or Charlestown, ex-<br>cept of tobacco, without consent, | 37     |       |

|                                                                                                                  | Sec. | Page    |
|------------------------------------------------------------------------------------------------------------------|------|---------|
| <b>INTEREST.</b>                                                                                                 |      |         |
| Rate of, established,                                                                                            |      | 190     |
| Party to usurious contract, good witness,                                                                        | 2    | 191     |
| One per cent. allowed brokers, &c.                                                                               | 3    |         |
| Giving more than lawful interest for forbearance<br>of payment will not render a contract usuri-<br>ous.—Note a. |      |         |
| Application of partial payment where interest is<br>due.                                                         |      |         |
| <b>INTESTATES' ESTATES,</b>                                                                                      |      | 192-3-4 |
| <b>JOINT TENANCY AND TENANCY IN COMMON.</b>                                                                      |      |         |
| Partition may be made,                                                                                           |      | 194     |
| Severed by death,                                                                                                | 2    | 195     |
| See titles, Estate in joint-tenancy and estate<br>in common.                                                     |      |         |
| <b>JUDGE ADVOCATE.</b>                                                                                           |      |         |
| His oath,                                                                                                        |      | 561     |
| His office and duties,                                                                                           |      | 571     |
| <b>JUDGMENTS.</b>                                                                                                |      |         |
| Interest continued on principal,                                                                                 |      | 195     |
| — to have the same lien as principal,                                                                            | 2    |         |
| Execution may issue at any time within three<br>years after enrolment, &c.                                       | 3    |         |
| Assignees of, may bring suits,                                                                                   | 4    |         |
| Creditor to enter satisfaction,                                                                                  | 5, 6 | 196     |
| Debtor, with consent of creditor, may confess,<br>before clerk, &c.                                              | 7    | 197     |
| Form of confession, &c.                                                                                          | 8    |         |
| Execution may issue,                                                                                             | 9    |         |
| Suggestion of fraud,                                                                                             | 10   |         |
| Fees under confession before clerk,                                                                              | 11   | 198     |
| Bind lands from the time they are entered up,                                                                    | 13   | 148     |
| Against heir shall be for debt, &c.                                                                              | 10   |         |
| None to be reversed, after verdict, for defect in<br>writ, &c.                                                   | 70   | 217     |
| <b>JUDICATURE.</b>                                                                                               |      |         |
| State divided into districts,                                                                                    |      | 198     |
| Districts arranged into circuits,                                                                                | 2    | 199     |
| Court of sessions and common pleas held in each<br>district,                                                     | 3    |         |
| Times and places of holding courts,                                                                              | 4    | 200     |
| Duration of terms,                                                                                               | 5    | 201     |
| Privilege of persons attending court,                                                                            | 6    |         |

## INDEX.

687

|                                                                                                     | Sec. | Page. |
|-----------------------------------------------------------------------------------------------------|------|-------|
| <b>Attorney-general and solicitor to attend,</b>                                                    | 7    |       |
| <b>Clerks, how elected, commissioned, &amp;c.</b>                                                   | 8    |       |
| <b>Clerks may appoint deputy, &amp;c.</b>                                                           | 9    |       |
| <b>Vacancy in office of clerk,</b>                                                                  | 10   | 202   |
| <b>Clerk may qualify before justice of Q.</b>                                                       | 11   |       |
| <b>Shall give constant attendance,</b>                                                              | 12   |       |
| <b>No clerk to act as attorney, or solicitor,</b>                                                   | 13   |       |
| <b>Commissions and deputations to be recorded,</b>                                                  | 14   |       |
| <b>Clerk to read over minutes, &amp;c.</b>                                                          | 15   |       |
| <b>To collect their own fees, &amp;c.</b>                                                           | 16   |       |
| <b>Penalty on clerks for false entry,</b>                                                           | 17   | 203   |
| <b>Judges to cause new jury lists to be made once in<br/>three years,</b>                           | 18   |       |
| <b>Jurors to be drawn, &amp;c.</b>                                                                  | 19   |       |
| — to be paid,                                                                                       | 20   | 204   |
| <b>Special juries,</b>                                                                              | 21   | 205   |
| <b>Judge not attending, clerk, &amp;c. to draw jury,</b>                                            | 22   | 206   |
| <b>Jurors, how summoned,</b>                                                                        | 23   |       |
| <b>Penalty on defaulters,</b>                                                                       | 24   |       |
| <b>Who exempt from serving on juries—see note</b>                                                   |      | ib.   |
| <b>Penalty on sheriff for summoning persons, or ne-<br/>glecting to summon one named in pannel,</b> | 25   | 207   |
| <b>But one oath to be administered to juror,</b>                                                    | 26   |       |
| <b>Jurors allowed for each cause tried, § 1 07,</b>                                                 | 27   |       |
| <b>Jury boxes to be locked up, &amp;c.</b>                                                          | 28   |       |
| <b>Penalty on judges, &amp;c. for failing to draw jury,</b>                                         | 29   |       |
| <b>Original process from common pleas,</b>                                                          | 30   |       |
| <b>Judicial process, how tested,</b>                                                                | 31   | 208   |
| <b>Service of process, where bail is not required;</b>                                              | 32   |       |
| <b>Sheriff returning cepi corpus to indorse names of<br/>bail,</b>                                  | 33   |       |
| <b>Process not served in time for first court, good<br/>for second,</b>                             | 34   |       |
| <b>Defendants residing within different districts,</b>                                              | 35   |       |
| <b>Locality of jurisdiction,</b>                                                                    | 36   |       |
| <b>Witness not necessary at service of scire facias,</b>                                            | 37   | 209.  |
| <b>Summary jurisdiction,</b>                                                                        | 38   |       |
| <b>In what case plaintiff shall not have costs, and no<br/>writ of ca. sa. shall issue,</b>         | 39   |       |
| <b>Leaving copy writ no service, unless defendant<br/>be resident in state,</b>                     | 40   |       |
| <b>When execution may issue,</b>                                                                    | 41   |       |
| <b>When defendant may be held to bail,</b>                                                          | 42   |       |
| <b>Bail bond may be assigned,</b>                                                                   | 43   | 210   |
| <b>Appearance entitled to privilege of special bail,</b>                                            | 44   |       |
| <b>Service of rules to revive proceedings in case of<br/>absence,</b>                               | 45   |       |

## INDEX

|                                                                       | Sec.           | Page. |
|-----------------------------------------------------------------------|----------------|-------|
| Bail in extra cases,                                                  | 46             |       |
| All writs, &c. to be returned to clerks, and declaration to be filed, | 47             |       |
| When bail becomes liable.—see note.                                   |                |       |
| In what cases not necessary to prove demand,                          | 48, 49         | 211   |
| Subscribing witness to bond, &c. absent,                              | 50             | 212   |
| Verdicts to be expressed in dollars, &c.                              | 51             |       |
| Writs of equity, when to be executed,                                 | 52             |       |
| Defendant being in prison,                                            | 53             |       |
| Defendant may plead several pleas,                                    | 54             | 213   |
| Plea of payment in bar,                                               | 55             |       |
| Money brought into court,                                             | 56             |       |
| General issue in detinue,                                             | 57             |       |
| Method of trying titles to lands,                                     | 58, 59, 60, 61 |       |
| Costs in actions to try titles,                                       | 62             | 215   |
| Not necessary to petition for attachment, or summons in dower,        | 63             |       |
| Service of process in case of copartnership,                          | 64             |       |
| Actions on bonds for performance of covenants,                        | 65             |       |
| Proceedings in claims for freedom,                                    | 66             |       |
| Service of process in absence of one executor,                        | 67             | 216   |
| Death of plaintiff between interlocutory and final judgment,          | 68             |       |
| Death of one plaintiff, or defendant, cause of action surviving,      | 69             | 217   |
| No judgment to be reversed after verdict for defect in writ, &c.      | 70             |       |
| What regarded in demurrer,                                            | 71             | 218   |
| Omissions, &c. amended by judges,                                     | 72             |       |
| Executions, whence to be issued,                                      | 73             |       |
| — to be returned by sheriffs,                                         | 74             |       |
| Penalty on sheriff for default,                                       | 75             |       |
| Attorneys, &c. to have fees taxed,                                    | 76             | 218   |
| Debtor dying in execution, new execution may issue,                   | 77             |       |
| Judges of C. P. shall point out places for public sales,              | 78             |       |
| May order sale of mortgaged lands,                                    | 79             |       |
| May make rules for dispatch of business,                              | 80             | 220   |
| May determine causes in court of caveats,                             | 81             |       |
| May appoint guardians,                                                | 82             |       |
| Have jurisdiction in cases of idiocy,                                 | 83             |       |
| Shall determine appeals from ordinary,                                | 84             |       |
| Two, or more, judges attending, may hold district courts,             | 85             |       |
| Judges may grant writs of prohibition, &c. at chambers,               | 86             | 221   |

**INDEX.**

68

|                                                                                                                  | Sec. Page |
|------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Day appointed for holding court being sunday,</b>                                                             | 87        |
| <b>Judge not attending, clerk, &amp;c. may adjourn court,</b>                                                    | 88        |
| <b>Special courts may be ordered,</b>                                                                            | 89        |
| <b>Clerk's duty in case of special court,</b>                                                                    | 90        |
| <b>Judge holding special court to cause jury to be drawn,</b>                                                    | 91        |
| <b>Parties, witnesses, &amp;c. to attend special court,</b>                                                      | 92        |
| <b>Judge shall appoint constables,</b>                                                                           | 93        |
| <b>Misbehavior in presence of court,</b>                                                                         | 94        |
| <b>Person wounded in one county and dying in another,</b>                                                        | 95        |
| <b>Person indicted for capital offence to have copy of indictment, &amp;c.</b>                                   | 96        |
| <b>Party committed petitioning to be brought to trial,</b>                                                       | 97        |
| <b>To have process to compel attendance of witnesses,</b>                                                        | 98        |
| <b>After conviction of principal, accessory may be proceeded against,</b>                                        | 99        |
| <b>Prisoner discharged not bound to pay costs,</b>                                                               | 100       |
| <b>Surie à de meistate lingue,</b>                                                                               | 101       |
| <b>Challenge to jurors,</b>                                                                                      | 102       |
| <b>None to challenge, peremptorily, more than twenty jurors,</b>                                                 | 103       |
| <b>Juror absenting himself during trial,</b>                                                                     | 104       |
| <b>Certain offenders standing mute, &amp;c. lose benefit of clergy,</b>                                          | 105       |
| <b>Sentence may be passed at next court after conviction,</b>                                                    | 106       |
| <b>Execution may be respite,</b>                                                                                 | 107       |
| <b>No prisoner to be removed, but by writ under judge's hand,</b>                                                | 108       |
| <b>Recognition to keep the peace, &amp;c.</b>                                                                    | 109       |
| <b>Party robbed giving evidence entitled to writ of restitution,</b>                                             | 110       |
| <b>General duties, &amp;c. of circuit solicitors,</b>                                                            | 111       |
| <b>Duty of parties, where the rights of the state are involved,</b>                                              | 112       |
| <b>Constitutional court established,</b>                                                                         | 113       |
| <b>When the opinion of the circuit judges shall be taken,</b>                                                    | 114       |
| <b>When final decision is against appellant, or appeal is withdrawn, interest charged,</b>                       | 115       |
| <b>Court shall consist of not less than four judges, and in case of equal decision, case shall be postponed,</b> | 116       |

## INDEX.

|                                                                              | Sec. Pg.      |
|------------------------------------------------------------------------------|---------------|
| Opinion of the court to be written and signed by all the judges, who concur, | 117           |
| Judge, when required, shall sign bill of exceptions,                         | 118 220       |
| Judges shall appoint a clerk,                                                | 119           |
| Opinions of judges to be recorded, &c.                                       | 120           |
| Sheriff to attend constitutional court,                                      | 121           |
| Equity circuits, and districts,                                              | 122 230       |
| Judges shall hold courts in rotation,                                        | 123 251       |
| May order special courts,                                                    | 124           |
| Sheriff to attend court of equity,                                           | 125           |
| No suit in equity, where plain remedy at common law,                         | 126           |
| Suitors may do their own business,                                           | 127           |
| Where cases shall be tried,                                                  | 128           |
| Registers and commissioners appointed—their general duties—to make sales,    | 129           |
| To give bond,                                                                | 130           |
| Court to sit from day to day,                                                | 131           |
| Defendants residing in different districts,                                  | 132           |
| Writs, &c. to be signed by register: no process title after bill filed,      | 133           |
| Office hours of commissioners,                                               | 134           |
| Court always open,                                                           | 135           |
| Judge at chambers may hear motions, &c.                                      | 136           |
| May make orders of reference,                                                | 137           |
| Judges shall make rules,                                                     | 138           |
| Writs of subpoena ad respondendum,                                           | 139           |
| Time to plead, &c. may be extended: bills when to be taken pro confesso,     | 140           |
| Attachment to compel defendant to answer,                                    | 141           |
| Defendant being absent from state,                                           | 142           |
| When party may proceed by petition,                                          | 143 235       |
| Examination of witnesses,                                                    | 144 236       |
| Defendant dying in custody,                                                  | 145           |
| Fi. fa. may issue under decree,                                              | 146           |
| Satisfaction may be entered on decree,                                       | 147           |
| Master and commissioners may issue ne exeat,                                 | 148 237       |
| Injunctions,                                                                 | 149, 150, 151 |
| Court of appeals established,                                                | 152 238       |
| Appellant to give notice,                                                    | 153           |
| Commissioner for district of Columbia to act for court of appeals,           | 154 239       |
| Sheriff of Richland district to attend equity courts,                        | 155           |
| Opinions of judges to be recorded,                                           | 156           |

|                                                                                           | Sec. Page. |
|-------------------------------------------------------------------------------------------|------------|
| <b>Judges to give reasons, in writing, for granting, or refusing, new trials, &amp;c.</b> | 157        |
| <b>Grounds and reasons of judges' decisions to be in writing, and recorded,</b>           | 158        |
| <b>Persons' names may be changed by court of equity, or common law,</b>                   | 159        |
| <b>Effect of such change,</b>                                                             | 160        |
| <b>Rules of the courts of sessions and com. pleas,</b>                                    | 241        |
| <b>Rules and orders of court of equity,</b>                                               | 254        |
| <b>JURORS.</b>                                                                            | <b>612</b> |
| See title <b>Judicature,</b>                                                              | 18 to 26   |
| See also <b>Embracery,</b>                                                                | 115        |
| <b>JUSTICES OF THE PEACE,</b>                                                             | <b>513</b> |
| How appointed,                                                                            | 259        |
| To continue in office four years,                                                         | 2          |
| When to qualify,                                                                          | 3          |
| Their oath,                                                                               | 4          |
| Penalty for acting, without being qualified,                                              | 5          |
| Jurisdiction,                                                                             | 6, 7       |
| Mode of proceeding in debt, &c.                                                           | 8          |
| May summon witnesses,                                                                     | 9          |
| When plaintiff's oath shall be sufficient evidence,                                       | 10         |
| Plaintiff non-suited, defendant to have costs,                                            | 11         |
| Constables to execute process,                                                            | 12         |
| Sale by constables,                                                                       | 13         |
| Justices of quorum ex officio,                                                            | 14         |
| How to proceed in charges for felony, &c.                                                 | 15         |
| Not to keep tavern, &c.                                                                   | 16         |
| Shall return recognizances, &c. to clerk,                                                 | 17         |
| How removed for malpractice,                                                              | 18         |
| May rule plaintiff to give security for costs, when out of state,                         | 19         |
| List of, to be returned to secretary of state,                                            | 20         |
| May act as coroner,                                                                       | 11         |
| Proceedings in appeal from judgment of justice,                                           | 625        |
| <b>LANDS.</b>                                                                             |            |
| Vacant, granted for fees of office,                                                       | 264        |
| Commissioners of locations to receive original entries, &c.                               | 2          |
| Elected by the people,                                                                    | 25, 26     |
| Bond and oath of commissioner,                                                            | 3          |
| Shall hold office four years, &c.                                                         | 24         |
| Form of surveys on navigable waters,                                                      | 4          |
| Where no grant within six months after return to surveyor general's office,               | 5          |

## INDEX.

|                                                                                  | Sec. Page. |
|----------------------------------------------------------------------------------|------------|
| <b>Survey returned to location office must be carried through in six months,</b> | <b>6</b>   |
| <b>Six months allowed to carry surveys into grant,</b>                           | <b>7</b>   |
| <b>Surplus lands,</b>                                                            | <b>8</b>   |
| <b>Possession for five years before July 4, 1776, a good title,</b>              | <b>9</b>   |
| <b>Duties of surveyor-general and secretary of state,</b>                        | <b>10</b>  |
| <b>Bond of surveyor-general,</b>                                                 | <b>11</b>  |
| <b>Surveyor-general may appoint deputies,</b>                                    | <b>12</b>  |
| <b>Duties of deputy surveyor,</b>                                                | <b>13</b>  |
| <b>Surveyor-general shall not hold any other office,</b>                         | <b>14</b>  |
| <b>His office hours,</b>                                                         | <b>15</b>  |
| <b>Attendance of commissioner of locations,</b>                                  | <b>16</b>  |
| <b>Surveyor-general, &amp;c. not to be concerned in vacant lands,</b>            | <b>17</b>  |
| <b>Lands, &amp;c. liable to execution,</b>                                       | <b>18</b>  |
| <b>LARCENY,</b>                                                                  | <b>514</b> |
| <b>LEASE.</b>                                                                    |            |
| Form of,                                                                         | 638        |
| <b>LEGACY,</b>                                                                   | 516        |
| <b>LIBEL,</b>                                                                    | 517        |
| <b>LICENSE: <i>to tavern-keepers and others.</i></b>                             |            |
| Not to be granted to person convicted of being concerned in gambling,            | 11 156     |
| To be granted by commissioners of roads,                                         | 267        |
| Secretary may grant, till next meeting of board,                                 | 2 268      |
| Fee for tavern license,                                                          | 3          |
| Money to be paid to commissioners of roads,                                      | 4 269      |
| Penalty for retailing without license,                                           | 5          |
| Each division of commissioners may grant,                                        | 6          |
| Billiard tables.—Distillers may retail one quart without license,                | 7          |
| No person to retail within one mile of any place of worship, except, &c.         | 8          |
| No spirituous liquors to be sold to slave without leave,                         | 9 270      |
| No retailer to permit tippling in disorderly manner,                             | 10         |
| Form of bond, &c.                                                                | 649        |
| <b>LIEN,</b>                                                                     | 518        |
| When mechanic shall have on buildings, &c.                                       | 7 314      |
| <b>LIMITATION OF ACTIONS,</b>                                                    |            |
| For lands,                                                                       | 270        |

|                                                                      | Sec.   | Page. |
|----------------------------------------------------------------------|--------|-------|
| <b>Of personal actions,</b>                                          | 2      |       |
| <b>Of penalties,</b>                                                 | 3      | 272   |
| <b>Redemption of personal property, mortgagee having possession,</b> | 4      |       |
| <b>Saving to party non compos,</b>                                   | 5      |       |
| <b>Decisions of constitutional court.—Note n.</b>                    |        |       |
| <b>TOTTERIES.</b>                                                    |        |       |
| <b>Prohibited,</b>                                                   | 273    |       |
| <b>Penalty for being concerned in,</b>                               | 2      |       |
| <b>Authorized by legislature must be drawn within five years,</b>    | 3      | 274   |
| <b>Tax on sale of tickets, not authorized,</b>                       | 4      |       |
| <b>Commissioners of, bound by terms of scheme.—Note.</b>             |        |       |
| <b>MANDAMUS AND QUO WARRANTO.</b>                                    |        |       |
| <b>Person intruding into office, &amp;c.</b>                         | 1, 2   |       |
| <b>Proceedings on mandamus,</b>                                      | 3      | 275   |
| <b>MARRIAGE,</b>                                                     |        |       |
| <b>MARRIAGE CONTRACT.</b>                                            |        |       |
| <b>Must particularize property, &amp;c.</b>                          | 275    |       |
| <b>Must be recorded in three months,</b>                             | 2      | 276   |
| <b>Existing provisions to March 8, 1785,</b>                         | 3      |       |
| <b>Form of marriage articles,</b>                                    | 658-60 |       |
| <b>MASTER AND APPRENTICE.</b>                                        |        |       |
| <b>Indenture, how executed,</b>                                      | 276    |       |
| <b>Any person may take apprentice,</b>                               | 2      | 277   |
| <b>Indenture may be assigned,</b>                                    | 3      |       |
| <b>Unexpired term of service, assets,</b>                            | 4      |       |
| <b>Disagreement between,</b>                                         | 5      | 278   |
| <b>Form of indenture by commissioners of poor,</b>                   | 581    |       |
| <b>Proceedings, on complaint against either,</b>                     | 582    |       |
| <b>Assignment of apprenticeship,</b>                                 | 584    |       |
| <b>Indenture with approbation of parent, &amp;c.</b>                 | 585    |       |
| <b>MAYHEM,</b>                                                       |        |       |
| <b>MILITIA.</b>                                                      |        |       |
| <b>State divided into five divisions,</b>                            | 278    |       |
| <b>Subdivided into brigades, &amp;c.</b>                             | 2      | 279   |
| <b>Major-general, how elected,</b>                                   | 3      |       |
| <b>Brigadier-general,</b>                                            | 4      |       |
| <b>Election of colonel of infantry,</b>                              | 5      | 280   |
| ——— of lieutenant-colonel,                                           | 6      |       |
| ——— of captain, &c.                                                  | 7      |       |
| ——— of lieutenant-colonel and major of cavalry, and artillery,       | 8      |       |

## INDEX.

|                                                                                                                     | Sec.   | Page. |
|---------------------------------------------------------------------------------------------------------------------|--------|-------|
| — of captain, &c. of cavalry, artillery, or light infantry,                                                         | 9      |       |
| — of colonel, or major of infantry, by whom ordered, and how conducted,                                             | 10     |       |
| — of captain, by whom ordered and how conducted,                                                                    | 11     | 281   |
| — of first-lieutenant, &c.                                                                                          | 12     |       |
| Vacancies during actual service filled by seniority,                                                                | 13     | 282   |
| Notice of election for major-general, &c.                                                                           | 14     |       |
| Where company refuses, or neglects, to elect after notice, vacancy may be filled by commanding officer of regiment, | 15     |       |
| Duties of managers of elections,                                                                                    | 16     |       |
| Contested elections,                                                                                                | 17     |       |
| Party dissatisfied may appeal,                                                                                      | 18     | 283   |
| Officers shall reside within their respective commands,                                                             | 19     |       |
| Their oath,                                                                                                         | 20     |       |
| Captains, &c. to enrol citizens, as they become liable to militia duty,                                             | 21     |       |
| Who liable,                                                                                                         | 22     |       |
| Captain may take census,                                                                                            | 23     | 284   |
| Who exempt from militia duty,                                                                                       | 24     |       |
| Free negroes, &c. to serve as pioneers,                                                                             | 25     | 285   |
| Citizen removing to enrol his name,                                                                                 | 26     |       |
| Equipment,                                                                                                          | 27, 28 |       |
| White apprentices,                                                                                                  | 28     |       |
| Arms to be distributed,                                                                                             | 29     |       |
| Penalty for appearing without arms after distribution,                                                              | 30     | 286   |
| Sergeants and corporals, how appointed,                                                                             | 31     |       |
| Places of rendezvous,                                                                                               | 32     | 287   |
| Parade grounds. <i>Sutler</i> ,                                                                                     | 33     |       |
| Regimental and battalion musters,                                                                                   | 34     |       |
| May be exempted from turning out in July, &c.                                                                       | 35     |       |
| Fines for not attending musters,                                                                                    | 36     | 288   |
| Officers to meet previous to regimental parade,                                                                     | 37     |       |
| Rules, &c. for exercise of infantry,                                                                                | 38     | 289   |
| Disobedience of orders under arms,                                                                                  | 39     |       |
| Courts martial,                                                                                                     | 40     |       |
| Oath,                                                                                                               | 41     | 290   |
| By whom ordered,                                                                                                    | 42     |       |
| Courts of inquiry,                                                                                                  | 43     |       |
| Officer found to be incompetent, cashiered,                                                                         | 44     | 291   |
| Collection of fines,                                                                                                | 45     |       |
| Form of warrant,                                                                                                    | 46, 47 |       |
|                                                                                                                     | 48     | 292   |

## INDEX.

693

|                                                                                     | Sec. | Page. |
|-------------------------------------------------------------------------------------|------|-------|
| <b>Collectors to account,</b>                                                       | 49   | 293   |
| <b>Appropriation of fines,</b>                                                      | 50   | 293   |
| <b>Regiment, &amp;c. aggrieved by division,</b>                                     | 61   | 294   |
| <b>Uniform,</b>                                                                     | 52   |       |
| <b>Aids de camp,</b>                                                                | 53   | 295   |
| <b>Returns of militia,</b>                                                          | 54   | 299   |
| <b>Civil process not to be executed at muster,</b>                                  | 55   |       |
| <b>Volunteer companies,</b>                                                         | 56   |       |
| <b>Blank commissions,</b>                                                           | 57   | 300   |
| <b>No officer exempt from patrol duty,</b>                                          | 58   |       |
| <b>Officers, &amp;c. of uniform companies liable to fines,</b>                      | 59   |       |
| <b>Officers disobeying orders,</b>                                                  | 60   |       |
| <b>Person disposed to quit uniform company,</b>                                     | 61   |       |
| <b>Captain's commission forfeited by neglecting to</b><br><b>muster company,</b>    | 62   |       |
| <b>Artillery companies, how arranged,</b>                                           | 63   |       |
| <b>Their complement of officers,</b>                                                | 64   | 301   |
| <b>Free negroes attached to artillery companies, as</b><br><b>pioneers, &amp;c.</b> | 65   |       |
| <b>Trumpeter, &amp;c. of color, how armed,</b>                                      | 66   |       |
| <b>Carbineers attached to cavalry,</b>                                              | 67   |       |
| <b>Regiments of cavalry,</b>                                                        | 68   |       |
| <b>One major to each squadron,</b>                                                  | 69   |       |
| <b>Cavalry to meet in troop, six times a year,</b>                                  | 70   |       |
| <b>Regiment of cavalry not complete, how to be</b><br><b>filled up,</b>             | 71   |       |
| <b>Governor may order out,</b>                                                      | 72   | 302   |
| <b>Their pay, &amp;c.</b>                                                           | 75   |       |
| <b>Subject to same rules and regulations as troops of</b><br><b>United States,</b>  | 74   |       |
| <b>How notified to appear at rendezvous,</b>                                        | 75   | 303   |
| <b>Penalty for not turning out,</b>                                                 | 76   |       |
| <b>Volunteers and substitutes to be accepted,</b>                                   | 77   |       |
| <b>Pay, &amp;c. of pioneers, &amp;c.</b>                                            | 78   |       |
| <b>Militia-men ordered out exempted from civil pro-</b><br><b>cess,</b>             | 79   |       |
| <b>Their estates also exempted,</b>                                                 | 80   | 304   |
| <b>Collection of fines for not appearing at rendez-</b><br><b>vous,</b>             | 81   |       |
| <b>Governor may aid in erecting temporary works,</b>                                | 82   |       |
| <b>May remove public arms, &amp;c.</b>                                              | 83   | 305   |
| <b>Major-general, &amp;c. may order out militia,</b>                                | 84   |       |
| <b>Alarm, how to be made,</b>                                                       | 85   |       |
| <b>May be made by any commissioned officer,</b>                                     | 86   | 306   |
| <b>Powers of field officers, &amp;c. in times of alarm,</b>                         | 87   | 307   |
| <b>Penalty for not turning out, &amp;c.</b>                                         | 88   |       |

|                                                                                   | Sec.             | Page      |
|-----------------------------------------------------------------------------------|------------------|-----------|
| <b>Commissioned officer may assemble to apprehend slaves, &amp;c.</b>             | 89               |           |
| <b>One fourth part of militia to be left at home, How to be designated,</b>       | 90               | 308       |
| <b>Persons furnishing substitute liable to patrol duty,</b>                       | 91               |           |
| <b>Unexpended provisions, &amp;c. how disposed of,</b>                            | 93               |           |
| <b>Horses belonging to cavalry to be appraised,</b>                               | 94               |           |
| <b>Pay of militia in service of state,</b>                                        | 95               |           |
| <b>Person executing militia law to have double costs, if unjustly prosecuted,</b> | 96               | 310       |
| <b>Officer neglecting his duty to be cashiered,</b>                               | 97               |           |
| <b>Organization of the staff,</b>                                                 | 98, 99, 100, 101 | and note. |
| <b>MORTGAGE.</b>                                                                  |                  |           |
| <b>Order of payment of debts secured by,</b>                                      |                  | 312       |
| <b>Mortgagor deemed owner of lands, &amp;c.</b>                                   | 2                | 313       |
| <b>Mortgagee may take release,</b>                                                | 3                |           |
| <b>Mortgage of negroes, &amp;c.</b>                                               | 4                |           |
| <b>Privilege of subsequent mortgagee,</b>                                         | 5                |           |
| <b>Penalty on register for false certificate,</b>                                 | 6                |           |
| <b>Mechanic shall have lien on building, &amp;c.</b>                              | 7                | 314       |
| <b>Forms of, for land,</b>                                                        |                  | 661       |
| Do. for personal property,                                                        |                  | 661       |
| Do. counter security,                                                             |                  | 662       |
| <b>NEGROES, FREE.</b>                                                             |                  |           |
| <b>Person holding one, as slave,</b>                                              | 48               | 97        |
| <b>Person bringing one into state,</b>                                            | 49               |           |
| <b>None to migrate into this state,</b>                                           | 50               | 98        |
| <b>Penalty on, for harboring runaway,</b>                                         | 25               | 389       |
| <b>Evidence against,</b>                                                          | 35               | 394       |
| <b>None to hold free negroes as slaves, &amp;c.</b>                               | 47               | 398       |
| <b>Penalty for bringing one into this state,</b>                                  | 48               |           |
| <b>Proceedings in claims for freedom,</b>                                         | 66               | 315       |
| <b>To serve as pioneers,</b>                                                      | 25               | 285       |
| <b>To be attached to artillery,</b>                                               | 65               | 301       |
| <b>Forms of proceeding against,</b>                                               |                  | 629       |
| <b>NUISANCE,</b>                                                                  |                  |           |
| <b>OFFICE.</b>                                                                    |                  |           |
| <b>Penalty for selling, &amp;c.</b>                                               |                  | 314       |
| <b>Sale void,</b>                                                                 | 2                | 315       |
| <b>Officer may qualify before justice (Q. U.)</b>                                 | 3                | 316       |
| <b>Officers leaving the state,</b>                                                | 4, 5, 6, 7       |           |
| <b>Sheriff, &amp;c. of Charleston district to deposit money in bank,</b>          | 8                |           |

## INDEX.

697

|                                                                                                          | Sec.       | Page. |
|----------------------------------------------------------------------------------------------------------|------------|-------|
| <b>Penalty on failure,</b>                                                                               | 9          | 317   |
| <b>Payments to treasurers to be made by checks on<br/>Bank,</b>                                          | 10         |       |
| <b>Attorney-general, &amp;c. to be elected by joint bal-<br/>lot,</b>                                    | 11, 12, 13 |       |
| <b>Attorney-general, &amp;c. to give bond,</b>                                                           | 14         |       |
| <b>Bonds to be examined by attorney general, or so-<br/>licitor,</b>                                     | 15         | 318   |
| <b>Bonds of attorney general, &amp;c. to be approved<br/>and examined annually by governor,</b>          | 16         |       |
| <b>Bonds of other officers in upper division where de-<br/>posited, and by whom examined,</b>            | 17         | 319   |
| <b>Bonds of officers in lower division,</b>                                                              | 18         |       |
| <b>Commissioner in equity for Charleston district<br/>shall give bond, &amp;c.</b>                       | 19         | 320   |
| <b>Commissioners in equity and ordinaries may act<br/>as justices of quorum,</b>                         | 20         |       |
| <b>Clerks of courts to be registers of mesne convey-<br/>ances,</b>                                      | 21         |       |
| <b>Clerks shall transmit certified copies of accounts<br/>rendered by commissioners of poor, &amp;c.</b> | 22         | 321   |
| <b>Office hours,</b>                                                                                     | 23         |       |
| <b>Term of office of attorney general, &amp;c.</b>                                                       | 24         |       |
| <b>Clerks of courts, and others, elected by people,</b>                                                  | 25         |       |
| <b>Election contested,</b>                                                                               | 26         | 322   |
| <b>Governor to fill vacancies,</b>                                                                       | 27         |       |
| <b>Elections how regulated,</b>                                                                          | 28         | 323   |
| <b>Clerks, &amp;c. when to enter on duties of office,</b>                                                | 29         |       |
| <b>When officer shall not hold more than one office,</b>                                                 | 30         |       |
| <b>Commissioner in equity appointed receiver,</b>                                                        | 31         |       |
| <b>His commission in such case,</b>                                                                      | 32         |       |
| <b>When chargeable with compound interest,</b>                                                           | 33         | 324   |
| <b>Master and commissioner in equity shall keep re-<br/>gular accounts, &amp;c.</b>                      | 34         |       |
| <b>Shall deposit money, &amp;c. in official names,</b>                                                   | 35         |       |
| <b>Their papers, &amp;c. to be delivered over to suc-<br/>cessors,</b>                                   | 36         |       |
| <b>Not entitled to commiss. without actual sale, &amp;c.</b>                                             | 37         | 325   |
| <b>Commissioner's fee for appointment of guardian,</b>                                                   | 38         |       |
| <b>Penalty for neglect,</b>                                                                              | 39         |       |
| <b>ORDINARY,</b>                                                                                         |            | 529   |
| <b>Courts of, established,</b>                                                                           |            | 325   |
| <b>Judge may summon witnesses,</b>                                                                       | 2          |       |
| <b>Sheriff to execute process,</b>                                                                       | 3          | 326   |
| <b>Appeal from,</b>                                                                                      | 4          |       |
| <b>May call administrator to account, &amp;c.</b>                                                        | 5          |       |

## INDEX.

|                                                                           | Sec.    | Page.      |
|---------------------------------------------------------------------------|---------|------------|
| Shall make returns to secretary's office,                                 | 6       |            |
| Not to practice law,                                                      | 7       |            |
| To make search, grant certificate, &c.                                    | 8       | 327        |
| Shall hold office four years, &c. (See note<br>page 328.)                 | 24      | 321        |
| Elected by the people,                                                    | 25      |            |
| To give bond,                                                             | 14      | 317        |
| Election contested,                                                       | 26      | 322        |
| Appointed executor,                                                       | 7       | 131        |
| May order sale of personal estate,                                        | 22      | 136        |
| <b>PARENT AND CHILD,</b>                                                  |         | <b>530</b> |
| <b>PARTITION.</b>                                                         |         |            |
| Party may apply to clerk for summons, &c.                                 |         | 327        |
| When estate cannot be equally divided, &c.                                | 2       | 328        |
| Service of summons, how proved,                                           | 3       |            |
| Commissioners may call in surveyors, &c.                                  | 4       |            |
| <b>PATROL.</b>                                                            |         |            |
| Duties of commanding officers of beat companies,                          | 1, 2, 3 | 329        |
| Duties of commander of patrol,                                            | 4       |            |
| May enter disorderly houses, &c.                                          | 5       | 330        |
| Slaves not to carry fire arms, &c.                                        | 6       |            |
| Fine for misbehavior in patrolmen,                                        | 7       | 331        |
| Fine for disorderly behavior in captain of patrol,                        | 8       |            |
| Substitutes allowed,                                                      | 9       |            |
| Captain of patrol to make return on oath,                                 | 10      |            |
| May correct slaves found without ticket—may disperse unlawful assemblies, | 11      |            |
| Doors, &c. may be broken open,                                            | 12      | 332        |
| Owner of settled plantation to employ white man,                          | 13      |            |
| Patrol law to be read by commanding officers of companies,                | 14      |            |
| Intendants and wardens of incorporated towns to regulate patrols,         | 15      |            |
| Protection against vexatious suits,                                       | 16      | 333        |
| To be armed,                                                              | 17      |            |
| <b>PERJURY,</b>                                                           |         | <b>332</b> |
| Punishment for,                                                           | 1, 2, 3 |            |
| Oath of person convicted of, not to be received,                          | 4       | 334        |
| False affirmation,                                                        | 5       |            |
| Appropriation of forfeitures,                                             | 6       |            |
| <b>PERSONAL ACTIONS,</b>                                                  |         | <b>332</b> |

## INDEX

609

Sec. Page.

### **PHYSICIANS.**

|                                                        |           |
|--------------------------------------------------------|-----------|
| None to practice without license,                      | 334       |
| <b>Penalty,</b>                                        | <b>2</b>  |
| Burthen of proof to be on defendant,                   | 3         |
| Promises to persons not licensed, void,                | 4         |
| Two boards of, established,                            | 5         |
| At Charlestou and Columbia,                            | 6         |
| Annual meetings,                                       | 7         |
| Act not to effect persons previously in practice,      | 8         |
| Apothecaries to be licensed,                           | 9         |
| <b>By whom,</b>                                        | <b>10</b> |
| Three members of board may grant permit during recess, | 11        |
| Board at Columbia may elect officers, &c.              | 12        |
| Member failing to attend,                              | 13        |

### **PLEDGE,**

See Mortgage.

### **POLICY OF INSURANCE,**

536

### **POLYGAMY,**

39 90

Warrant, &c.

600

### **POOR.**

|                                                         |            |
|---------------------------------------------------------|------------|
| Commissioners of, to be elected,                        | 336        |
| To have oversight, &c.                                  | 2          |
| To elect treasurer, &c.                                 | 3          |
| To relieve poor, and may assess money for that purpose, | 4          |
| May bind out children,                                  | 5          |
| May assess money to pay debts,                          | 6          |
| Duty of tax collector,                                  | 7, 8       |
| Penalty for refusing to serve as commissioner,          | 9          |
| Settlement of poor persons,                             | 10         |
| Removing from one parish, &c. to another,               | 11         |
| Relations may be compelled to support,                  | 12         |
| May sue in forme pauperis,                              | 13, 14, 15 |
| Forms of proceeding,                                    | 840<br>634 |

### **PREGNANCY,**

538

### **PRETENCED TITLES,**

340

### **PRINCIPAL,**

537

### **PRISON-BOUNDS.**

|                                                       |      |
|-------------------------------------------------------|------|
| Extent of,                                            | 840  |
| Who entitled to,                                      | 2, 3 |
| Prisoner may surrender estate to justices,            | 4    |
| Debtor failing to give in schedule agreeably to bond, | 5    |

## INDEX.

|                                                                         | Sec.   | Page       |
|-------------------------------------------------------------------------|--------|------------|
| PENALTY for false schedule,                                             |        | 6          |
| <b>PRISON-BREACH,</b>                                                   |        | <b>539</b> |
| Do.                                                                     | 52     | 93         |
| <b>PRIVY-TOKENS,</b>                                                    |        | <b>342</b> |
| <b>PROMISE,</b>                                                         |        | <b>539</b> |
| <b>PROPERTY, in things personal,</b>                                    |        | <b>533</b> |
| <b>PUBLIC.</b>                                                          |        |            |
| Accounts expressed in dollars, &c.                                      |        | 342        |
| No money to be paid out of treasury but by authority of legislature,    | 2      |            |
| Penalty for erecting buildings, &c. on public lot,                      | 3      |            |
| Duty of party, where the rights of the state are involved,              | 112    | 228        |
| <b>RAPE,</b>                                                            |        | <b>540</b> |
| Do.                                                                     | 1, 2   | 87         |
| <b>RECAPTION, OR REPRISAL,</b>                                          |        | <b>540</b> |
| <b>REGISTER OF MESNE CONVEYANCES.</b>                                   |        |            |
| Clerk of court of common pleas to be,                                   | 21     | 520        |
| Penalty for false certificate respecting mortgage,                      | 6      | 513        |
| Shall hold office four years, &c.                                       | 24     | 521        |
| <b>RENT.</b>                                                            |        |            |
| Form of proceeding in distress for,                                     |        | 614        |
| Goods distrained for, may be replevied,                                 |        | 348        |
| Sheaves of corn, &c. may be distrained,                                 | 2      |            |
| Damages for pound breach, &c.                                           | 3      |            |
| Wrongful distress,                                                      | 4      | 544        |
| Writs of replevin,                                                      | 5      |            |
| Declaration in replevin,                                                | 6      |            |
| Surety in replevin bond,                                                | 7      |            |
| No slave, not the property of tenant, liable to distress,               | 8      |            |
| Goods taken under execution not to be removed, without payment of,      | 9      |            |
| Tenant fraudulently removing goods,                                     | 10     | 545        |
| Landlord may distrain after determination of lease,                     | 11     |            |
| Action of debt for,                                                     | 12     |            |
| Tenant holding over after demand,                                       | 13     |            |
| giving notice to quit,                                                  | 14     | 546        |
| Lease to determine absolutely at the time therein stated—probate lease, | 15     |            |
| Landlord desirous of re-possessing demised premises,                    | 16, 17 |            |

|                                                                                                        | Sec. | Page. |
|--------------------------------------------------------------------------------------------------------|------|-------|
| <b>Costs,</b>                                                                                          | 18   | 348   |
| <b>Tenant not to make alterations,</b>                                                                 | 19   | 644   |
| <b>Form of proceeding to remove tenant,</b>                                                            |      |       |
| <b>RIOT,</b>                                                                                           |      | 541   |
| <b>Form of proceeding,</b>                                                                             |      | 635   |
| <b>ROBBING;</b>                                                                                        |      | 541   |
| <b>Church,</b>                                                                                         | 4    | 87    |
| <b>Dwelling-house,</b>                                                                                 | 5    |       |
| <b>Booth, &amp;c.</b>                                                                                  | 6    | 88    |
| <b>Highway,</b>                                                                                        | 7    |       |
| <b>ROADS.</b>                                                                                          |      |       |
| <b>Penalty for refusing to serve as commissioner,</b>                                                  |      | 348   |
| <b>Vacancy in board of commissioners,</b>                                                              | 2    |       |
| <b>Commissioners shall serve three years, &amp;c.</b>                                                  | 3    | 349   |
| <b>Shall meet to form boards, &amp;c.</b>                                                              | 4    |       |
| <b>Opening new roads where there is opposition,</b>                                                    | 5    | 350   |
| <b>Fine on commissioner for not attending board,</b>                                                   | 6    |       |
| <b>Commissioners shall appoint persons to summon hands to work, &amp;c.</b>                            | 7    |       |
| <b>(what distance hands may be called to work.</b>                                                     |      |       |
| <b>Note a.)</b>                                                                                        |      |       |
| <b>Penalty for misbehavior on person refusing to serve as overseer,</b>                                |      |       |
| <b>Overscor neglecting his duty to be fined,</b>                                                       | 8    | 351   |
| <b>Persons liable to work on, to have six days' notice, except in cases of accidental obstruction,</b> | 9    |       |
| <b>To work on all roads within distance prescribed by law,</b>                                         | 10   | 352   |
| <b>Commissioners may make use of timber, &amp;c.</b>                                                   | 11   |       |
| <b>Penalty for obstructing roads, &amp;c.</b>                                                          | 12   |       |
| <b>Commissioners may contract for the building of bridges, &amp;c.</b>                                 | 13   | 353   |
| <b>Shall pay for timber for framed bridges,</b>                                                        | 14   |       |
| <b>May hire slaves, &amp;c.</b>                                                                        | 15   |       |
| <b>Penalty for injuring bridge,</b>                                                                    | 16   |       |
| <b>Vessels, &amp;c. to drag under bridges,</b>                                                         | 17   | 354   |
| <b>Commissioners may order trees to be left for shade,</b>                                             | 18   |       |
| <b>Shall cause roads to be posted, &amp;c.</b>                                                         | 19   |       |
| <b>Width of roads,</b>                                                                                 | 20   |       |
| <b>Adjoining set of commissioners, refusing to meet,</b>                                               | 21   |       |
| <b>Commissioners may direct summons, &amp;c. to sheriffs,</b>                                          | 22   | 355   |
| <b>Shall elect a treasurer—his duty.</b>                                                               | 23   |       |
| <b>Duty of solicitors,</b>                                                                             | 24   |       |

**INDEX.**

|                                                                                              | <b>Sec.</b> | <b>Page.</b> |
|----------------------------------------------------------------------------------------------|-------------|--------------|
| No petition for road, or bridge, received by legislature, without previous notice to com'rs. | 25          | 356          |
| Appropriation of fines,                                                                      | 26          |              |
| When a board shall be considered as dissolved,                                               | 27          |              |
| Forms of proceeding by commissioners,                                                        |             | 357          |
| <b>SABBATH.</b>                                                                              |             |              |
| No ordinary work to be done on,                                                              |             | 356          |
| No person shall sell goods, &c. on,                                                          | 2           |              |
| No public sports on,                                                                         | 3           |              |
| No tavernkeeper to suffer tippling, &c. on,                                                  | 4           | 357          |
| Penalty for causing slave to work on,                                                        | 5           |              |
| Justice of peace to proceed against offenders,                                               | 6           |              |
| No civil process to be served on,                                                            | 7           |              |
| Appropriation of forfeitures,                                                                | 8           | 358          |
| Indemnity to persons executing act,                                                          | 9           |              |
| <b>SALARIES AND FEES.</b>                                                                    |             |              |
| Salaries of governor, secretary, &c.                                                         |             | 358-9        |
| To be paid quarterly,                                                                        | 8           | 415          |
| <b>FEES.</b>                                                                                 |             |              |
| Of secretary of state,                                                                       |             | 359          |
| — surveyor-general,                                                                          |             | 360          |
| — deputy-surveyor,                                                                           |             |              |
| — commissioner of locations,                                                                 |             |              |
| — register of mesne conveyances,                                                             |             |              |
| — clerk of senate and house of representatives,                                              |             |              |
| — ordinary,                                                                                  |             | 361          |
| — coroner,                                                                                   |             |              |
| — notary public,                                                                             |             |              |
| — justice of the peace,                                                                      |             | 362          |
| — constables,                                                                                |             |              |
| — clergy of every settled church of every denomination,                                      |             | 363          |
| — complainant's solicitor in equity,                                                         |             |              |
| — defendant's solicitor,                                                                     |             |              |
| — master and commissioner in equity,                                                         |             | 364          |
| — register and commissioner in equity,                                                       |             |              |
| — attorneys in superior courts of law,                                                       |             | 365          |
| — defendant's attorney,                                                                      |             | 366          |
| — attorney-general,                                                                          |             |              |
| — clerks of sessions and peace,                                                              |             | 367          |
| — clerks of superior courts of law,                                                          |             |              |
| — sheriffs,                                                                                  |             | 368          |
| Master and commissioner in equity, &c. forfeit \$200, if they take more than lawful fee,     | 3           | 370          |

## INDEX.

703

|                                                                                                         | See . | Page. |
|---------------------------------------------------------------------------------------------------------|-------|-------|
| <b>Forfeiture of attorney, &amp;c. taking more than lawful fee, where demand does not exceed \$ 50,</b> | 4     |       |
| <b>Penalty on other public officers for taking more than lawful fees,</b>                               | 5     |       |
| <b>Account of fees to be rendered before payment,</b>                                                   | 6, 7  |       |
| <b>Clerks, &amp;c. to collect their own fees,</b>                                                       | 8     | 371   |
| <b>When plaintiffs reside in foreign countries, agents or attorneys liable.</b>                         |       |       |
| <b>SALE, OR EXCHANGE,</b>                                                                               | 542   |       |
| Search warrant,                                                                                         | 640   |       |
| <b>SECRETARY OF STATE.</b>                                                                              |       |       |
| His duty on receiving certified plat from surveyor-general,                                             | 19    | 265   |
| Not to be concerned in vacant lands,                                                                    | 17    | 267   |
| His fees,                                                                                               |       | 359   |
| His bond to be approved of, &c. by governor,                                                            | 16    | 318   |
| <b>SECURITY FOR THE PEACE,</b>                                                                          | 543   |       |
| Forms,                                                                                                  |       | 640   |
| <b>SHERIFFS,</b>                                                                                        |       | 543   |
| How elected,                                                                                            |       | 371   |
| Election contested,                                                                                     |       | 372   |
| Governor to fill vacancies,                                                                             |       | 3     |
| Laws regulating election of members of legislature, to apply to,                                        |       | 4     |
| When to enter on duties of office,                                                                      |       | 5     |
| Shall give bond, &c.                                                                                    |       | 6     |
| Sureties, how far liable,                                                                               | 7     | 373   |
| Commissioners to judge of sufficiency of security: vacancies amongst commissioners, how filled,         | 8     |       |
| Amount of bonds, &c.                                                                                    |       | 9     |
| Bonds, where deposited, &c.                                                                             |       | 10    |
| Not to share profits of office,                                                                         | 11    | 374   |
| May qualify before two justices of Q.                                                                   | 12    |       |
| Where to keep their offices,                                                                            |       | 13    |
| Shall attend courts,                                                                                    |       | 14    |
| Shall serve subpoenas, &c.                                                                              |       | 15    |
| Shall keep books, &c.                                                                                   | 16    | 375   |
| Shall advertise property for sale,                                                                      |       | 17    |
| Names of creditor and debtor to be inserted in advertisement,                                           |       | 18    |
| Fee for advertising, &c.                                                                                |       | 19    |
| No person compellable to take bill of sale,                                                             | 20    | 376   |
| Titles to lands sold by,                                                                                |       | 21    |
| Not to be concerned in purchases at their own sales,                                                    |       | 22    |

## INDEX.

|                                                                                                                                                       | Sec.       | Pag. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------|
| To pay over money to plaintiffs,                                                                                                                      | 23         |      |
| To make return of executions for taxes to controller,                                                                                                 | 24         |      |
| Purchaser liable to pay down ten per cent.                                                                                                            | 25-6-7-8   | 377  |
| Shall turn over writs, &c. to successors,                                                                                                             | 29         | 375  |
| Not liable to be ruled after two years,                                                                                                               | 30         |      |
| Shall receive persons committed to gaol,                                                                                                              | 31         |      |
| Shall certify names of prisoners,                                                                                                                     | 32         |      |
| Shall provide blankets,                                                                                                                               | 33         |      |
| Allowance for dieting prisoners,                                                                                                                      | 34-5       |      |
| Shall advertize negroes,                                                                                                                              | 35         | 379  |
| Shall not hire out negroes, &c.                                                                                                                       | 37         |      |
| Shall not lodge debtors with felons,                                                                                                                  | 38         |      |
| Shall not act as attorneys,                                                                                                                           | 39         |      |
| Shall not act as justices of peace,                                                                                                                   | 40         |      |
| Shall not make unreasonable distress,                                                                                                                 | 41         |      |
| Shall have custody of gaols,                                                                                                                          | 42         |      |
| Shall give certificate respecting prisoners,                                                                                                          | 43         |      |
| Gaol burnt, or destroyed,                                                                                                                             | 44         | 380  |
| Some person to live within gaol,                                                                                                                      | 45         |      |
| Have no right to question regularity of execution—must not take the goods of A to satisfy execution against B.—Note.                                  |            |      |
| Of Charleston, Georgetown, and Richland districts, to make monthly reports of money received by them in their official capacity to directors of bank, | 19         | 58   |
| Penalty for not returning execution,                                                                                                                  | 75         | 218  |
| To attend constitutional court,                                                                                                                       | 121        | 229  |
| To attend court of equity,                                                                                                                            | 123        | 231  |
| To execute process from commissioners of roads,                                                                                                       | 22         | 355  |
| To collect their own fees,                                                                                                                            | 8          | 371  |
| Shall execute process from tax collector,                                                                                                             | 20         | 407  |
| <b>SLANDER,</b>                                                                                                                                       |            | 545  |
| <b>SLAVES,</b>                                                                                                                                        |            | 546  |
| Person circulating paper with intent to disturb the peace, in relation to,                                                                            | 51         | 99   |
| Who deemed,                                                                                                                                           |            | 384  |
| Not to go from home without ticket,                                                                                                                   | 2          | 381  |
| Penalty for giving ticket to another's,                                                                                                               | 3          |      |
| May be examined, apprehended, &c.                                                                                                                     | 4          |      |
| Justice may disperse, &c.                                                                                                                             | 5          | 382  |
| Unlawful assemblies of,                                                                                                                               | 8, 7, 8, 9 |      |
| Not to carry offensive weapons,                                                                                                                       | 10         | 384  |
| Not to work out without ticket,                                                                                                                       | 11         | 385  |

**INDEX:**

**705**

|                                                                                          | Sec. | Page. |
|------------------------------------------------------------------------------------------|------|-------|
| <b>Not to deal, traffick, &amp;c. without license,</b>                                   | 12   |       |
| <b>Penalty for buying from, without license,</b>                                         | 13   | 586   |
| <b>Not permitted to hire house,</b>                                                      | 14   |       |
| <b>Not more than seven male slaves to travel together,</b>                               | 15   | 387   |
| <b>Not to be taught to write, &amp;c.</b>                                                | 16   |       |
| <b>Punishment of, for fire hunting,</b>                                                  | 17   |       |
| ——— for burning grass, &c.                                                               | 18   |       |
| ——— for branding horse, &c.                                                              | 19   | 388   |
| <b>Found abroad may be apprehended, &amp;c.</b>                                          | 20   |       |
| <b>Not to blow horns, &amp;c.—master not to countenance meetings of strange negroes,</b> |      |       |
| <b>Their apparel,</b>                                                                    | 21   |       |
| <b>Hours of labor, &amp;c.</b>                                                           | 22   |       |
| <b>To have sufficient food, &amp;c.</b>                                                  | 23   | 389   |
| <b>No person to sell spirituous liquors to,</b>                                          | 24   |       |
| <b>Punishment of, for harboring runaway—runaway harbored by white person,</b>            | 25   |       |
| <b>Runaway, how to be disposed of,</b>                                                   | 26   | 390   |
| <b>Owner may have possession on proof,</b>                                               | 27   | 391   |
| <b>When amount of sale of runaway shall be refunded to owner,</b>                        | 28   |       |
| <b>Maimed, beaten, &amp;c.</b>                                                           | 29   | 392   |
| <b>Punishment for murdering slave—for killing, or sudden heat,</b>                       |      | 30    |
| <b>Striking white person,</b>                                                            |      | 31    |
| <b>Trial of,</b>                                                                         |      | 32    |
| <b>Oath of justices and freeholders,</b>                                                 | 33   | 394   |
| <b>To give evidence without oath,</b>                                                    | 34   |       |
| <b>Evidence against free negroes, &amp;c.</b>                                            | 35   |       |
| <b>Justices may compel attendance of witnesses,</b>                                      | 36   | 395   |
| <b>Penalty for concealing one accused,</b>                                               | 37   |       |
| <b>May be punished with death,</b>                                                       | 38   |       |
| <b>Crimes declared felony without clergy,</b>                                            | 39   |       |
| <b>Guilty of homicide of white person—insurrection, &amp;c.</b>                          | 40   |       |
| <b>Under sentence of execution to be appraised,</b>                                      | 41   | 396   |
| <b>Constables to cause execution to be done,</b>                                         | 42   |       |
| <b>Penalty on public officers for neglect of duty in executing negro act,</b>            | 43   | 397   |
| <b>Act to be construed beneficially,</b>                                                 | 44   |       |
| <b>Recovery and appropriation of fines, &amp;c.</b>                                      | 45   |       |
| <b>None to be emancipated but by act of legislature,</b>                                 | 46   | 398   |
| <b>Forms of proceeding in trial of,</b>                                                  |      | 629   |

## INDEX.

|                                                                        | Sec.   | Pg. |     |
|------------------------------------------------------------------------|--------|-----|-----|
| <b>SOLICITORS.</b>                                                     |        |     |     |
| To attend courts,                                                      | 7      | 201 |     |
| Their general duties,                                                  | 111    | 227 |     |
| Shall hold their office four years,                                    | 24     | 621 |     |
| Elected by joint ballot.                                               | 11     | 317 |     |
| 'To commence suit against person obstructing road,                     | 24     | 335 |     |
| <b>SUITS, frivolous and vexations.</b>                                 |        |     |     |
| In such suits against public officers—defendants to have double costs, | 2      | 399 |     |
| In trespass quare clausum fregit,                                      | 3      | 400 |     |
| In actions for slanderous words,                                       | 4      | 401 |     |
| Where judgment shall be given for defendant,                           | 4      | 401 |     |
| <b>SURVEYOR-GENERAL.</b>                                               |        |     |     |
| His duty on return of survey,                                          | 10     | 466 |     |
| To enter into bond,                                                    | 11     | 466 |     |
| May appoint deputies,                                                  | 12     |     |     |
| Duties of deputy-surveyor,                                             | 13     |     |     |
| Shall not hold any other office,                                       | 14     | 467 |     |
| Office hours                                                           | 15     |     |     |
| Not to be concerned in vacant lands;                                   | 17     |     |     |
| <b>TAXES.</b>                                                          |        |     |     |
| Oath of enquirer, &c.                                                  |        | 400 |     |
| Enquirers, &c. to give bonds,                                          | 2      | 401 |     |
| Collector's term of office,                                            | 24     | 921 |     |
| Percentage allowed,                                                    | 3      | 401 |     |
| Collectors to give notice, &c. to receive returns,                     | 4      |     |     |
| Amount of bonds.—Note p.                                               |        |     |     |
| Proprietor to make return on oath,                                     | 5      | 402 |     |
| Party in possession 1st October to pay tax,                            | 6      |     |     |
| Amount of poor, or bridge tax, to be specified in receipt,             |        |     |     |
| Attorney, or trustee, how executed,                                    | 7      |     |     |
| Penalty for neglect to make return on payment,                         | 8      | 403 |     |
| Collector may issue warrant for double supposed amount of tax,         | 9      | 404 |     |
| Persons concealing part of taxable property,                           | 10     |     |     |
| Collector shall inquire for lands owned by absentees,                  | 11, 12 |     |     |
| Treasurer's order not to be taken in payment,                          | 13     | 405 |     |
| Blank returns to be furnished—oath of person making return,            |        | 14  |     |
| Person leaving the state between return and payment of tax,            |        | 15  | 406 |
| How ascertained, &c. when collector is dead,                           | 16     |     |     |

**INDEX.**

707

| Sec. | Page. |
|------|-------|
| 17   |       |
| 18   | 407   |
| 19   |       |
| 20   |       |
| 21   |       |
| 22   | 408   |
| 23   |       |
| 24   | 409   |
| 25   |       |
| 26   |       |
| 27   | 410   |
| 28   |       |
| 29   |       |
| 30   |       |
| 31   | 411   |
| 32   |       |
| 33   |       |
| 34   |       |
| 35   |       |
| 7, 8 | 338   |
| 11   | 317   |
|      | 546   |
|      | 547   |
|      | 548   |
|      | 550   |
|      | 412   |
| 2    |       |
| 3    |       |
| 4    |       |
| 5    |       |
| 6    | 413   |

|                                                                                                                                   |  |
|-----------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Taxes preferred to other debts, &amp;c.</b>                                                                                    |  |
| <b>No demand against the state to be paid 'till after party's taxes are satisfied,</b>                                            |  |
| <b>Collectors may issue executions,</b>                                                                                           |  |
| <b>Shall direct warrants, &amp;c. to sheriff,</b>                                                                                 |  |
| <b>Shall make no distinction of persons,</b>                                                                                      |  |
| <b>Penalty for neglecting to perform duties required by any tax act,</b>                                                          |  |
| <b>Shall render accounts, on oath, to commissioners of treasury,</b>                                                              |  |
| <b>Collectors to exhibit quantity of land, and number of negroes in different columns, to be preserved in aggregate of taxes,</b> |  |
| <b>Commissioners of treasury may issue executions against collectors,</b>                                                         |  |
| <b>Collectors to make duplicate returns,</b>                                                                                      |  |
| <b>Commissioners of treasury may issue executions against all persons in arrears for taxes, &amp;c.</b>                           |  |
| <b>May draw order in favor of annuitant,</b>                                                                                      |  |
| <b>Collectors shall take two receipts from treasurer,</b>                                                                         |  |
| <b>Default of collector to be reported by treasurer,</b>                                                                          |  |
| <b>Comptroller may suspend collector,</b>                                                                                         |  |
| <b>When governor may appoint collector,</b>                                                                                       |  |
| <b>Collectors liable for losses,</b>                                                                                              |  |
| <b>Protected against vexatious suits,</b>                                                                                         |  |
| <b>Collector to make duplicate return of poor tax to comptroller,</b>                                                             |  |
| <b>To collect poor tax,</b>                                                                                                       |  |
| <b>Elected by joint ballot, &amp;c.</b>                                                                                           |  |
| <b>TENDER,</b>                                                                                                                    |  |
| <b>TIME,</b>                                                                                                                      |  |
| <b>TORTS,</b>                                                                                                                     |  |
| <b>TRESPASS,</b>                                                                                                                  |  |
| <b>TREASURY.</b>                                                                                                                  |  |
| <b>Treasurer to give bonds,</b>                                                                                                   |  |
| <b>To make monthly reports to comptroller,</b>                                                                                    |  |
| <b>Not to keep accounts between offices,</b>                                                                                      |  |
| <b>Shall deposit money in bank,</b>                                                                                               |  |
| <b>In what case they may draw order in favor of annuitant,</b>                                                                    |  |
| <b>Shall not draw order on tax collector, except in favor of annuitant—payments to be made at treasury office,</b>                |  |

## INDEX.

|                                                                                 | Sec.    | Pg.    |
|---------------------------------------------------------------------------------|---------|--------|
| Office hours,                                                                   | 7       |        |
| Shall keep accounts of monies appropriated,                                     | 9       |        |
| — of all sums unappropriated,                                                   | 10      |        |
| Shall report, annually, defaults of tax collectors,                             | 11      |        |
| Payment to treasurer to be made by check on<br>bank,                            | 10      | 317    |
| Bond of treasurer of upper division to be appro-<br>ved, &c. by governor,       | 16      | 318    |
| May issue execution for arrears of taxes,                                       | 25, 27  | 409-10 |
| <b>TRIAL,</b>                                                                   |         | 550    |
| Before court martial, conducted publicly, and<br>with open doors, &c.           |         | 559    |
| Grounds of challenge,                                                           |         | 560    |
| Oath of members of court,                                                       |         | 561    |
| Do.                                                                             | 42      | 290    |
| Interpreter may be employed,                                                    |         | 563    |
| Witnesses, how examined,                                                        |         | 564    |
| <b>USES AND TRUSTS.</b>                                                         |         |        |
| Party having benefit adjudged in possession,                                    |         | 415    |
| Party entitled to rent adjudged in possession,                                  | 2       | 414    |
| Party having benefit may maintain action,                                       | 3       |        |
| Trustee, when not necessary to preserve continua-<br>gent remainder,            | 4       |        |
| Trustees may be substituted,                                                    | 5       |        |
| Form of a deed of trust,                                                        |         | 668    |
| <b>VAGRANTS.</b>                                                                |         |        |
| Who deemed,                                                                     |         | 415    |
| Justices may proceed against—their services may<br>be sold,                     | 2, 3, 4 | 416    |
| If not sold, may be whipped, &c.                                                | 5       | 417    |
| Person of suspicious character to produce certifi-<br>cate,                     | 6       | 418    |
| Penalty on justice for neglect,                                                 | 7       |        |
| Informer convicted of malice,                                                   | 8       |        |
| Proceedings before justice and freeholders,                                     |         | 647    |
| <b>VENDUES.</b>                                                                 |         |        |
| City council of Charleston may impose tax on<br>sales at vendue,                |         | 418    |
| Auctioneers may recover amount of sales in sum-<br>mary way,                    | 2       |        |
| Terms of sale not complied with, property may<br>be re-sold, &c.                | 3       | 419    |
| Remedy for owners of property against auct'rs.                                  | 4       |        |
| When auctioneer shall not be entitled to benefit<br>of insolvent debtors' acts, | 5       | 420    |

**VESSELS.**

|                                                                                   | Sec. | Page. |     |
|-----------------------------------------------------------------------------------|------|-------|-----|
| Stealing schooner, &c. felony,                                                    |      | 420   |     |
| Plundering one in distress, felony,                                               | 2    | 421   |     |
| Warrant to search for goods stolen from,                                          | 3    |       |     |
| Goods unlawfully taken from may be stopped, &c.                                   | 4    |       |     |
| Penalty for importing malefactor,                                                 | 5    |       |     |
| Master of, lodging seaman in gaol to give security,                               | 6    | 422   |     |
| Coming into port, to be examined,                                                 | 7    |       |     |
| Captain to declare on oath respecting state of health, &c.                        | 8    | 423   |     |
| Vessel performing quarantine to obey orders,                                      | 9    | 424   |     |
| None to go on board such vessel without leave,                                    | 10   |       |     |
| Allowance to pilot on board vessel performing quarantine,                         |      | 11    |     |
| Vessel coming from Mediterranean or Levant, to produce certificate of health, &c. |      | 12    |     |
| Penalty for false bill of health,                                                 | 13   | 425   |     |
| Governor may enforce obedience to quarantine laws.                                |      | 14    |     |
| Vessels violating quarantine laws may be boarded by force,                        |      | 15    | 426 |
| Penalty for breach of quarantine laws,                                            |      | 16    |     |
| Salary to keeper of lazaretto discontinued, &c.                                   |      | 17    |     |

|                                |  |            |
|--------------------------------|--|------------|
| <b>WARRANT, for a witness,</b> |  | <b>619</b> |
|--------------------------------|--|------------|

|                            |  |            |
|----------------------------|--|------------|
| <b>WARRANT for felony,</b> |  | <b>620</b> |
|----------------------------|--|------------|

|               |  |            |
|---------------|--|------------|
| <b>WASTE,</b> |  | <b>550</b> |
|---------------|--|------------|

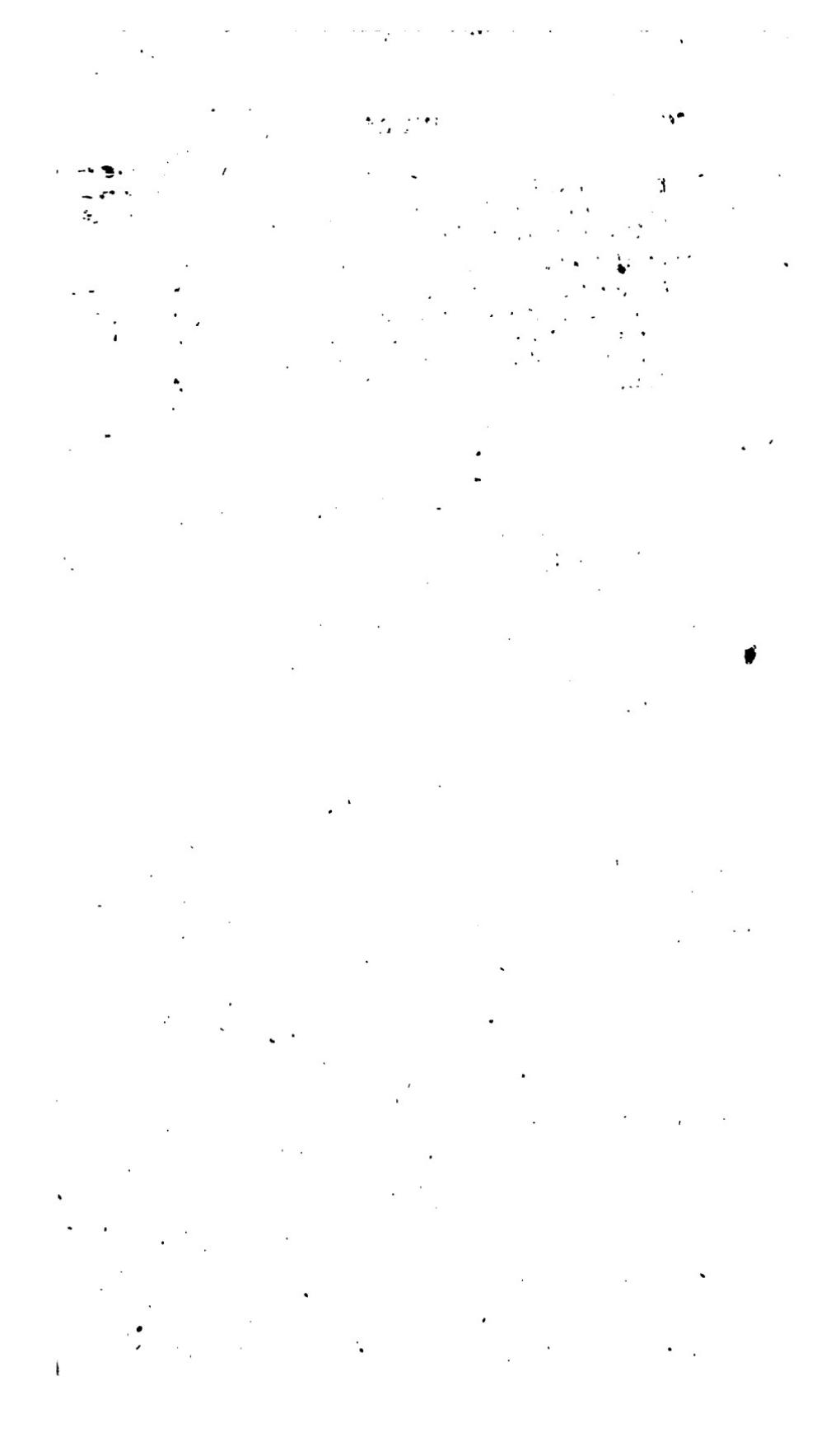
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|----------------------------------------------------|--|-----|
| Tenant for life, or years, liable for damages, &c. |  | 426 |
|----------------------------------------------------|--|-----|

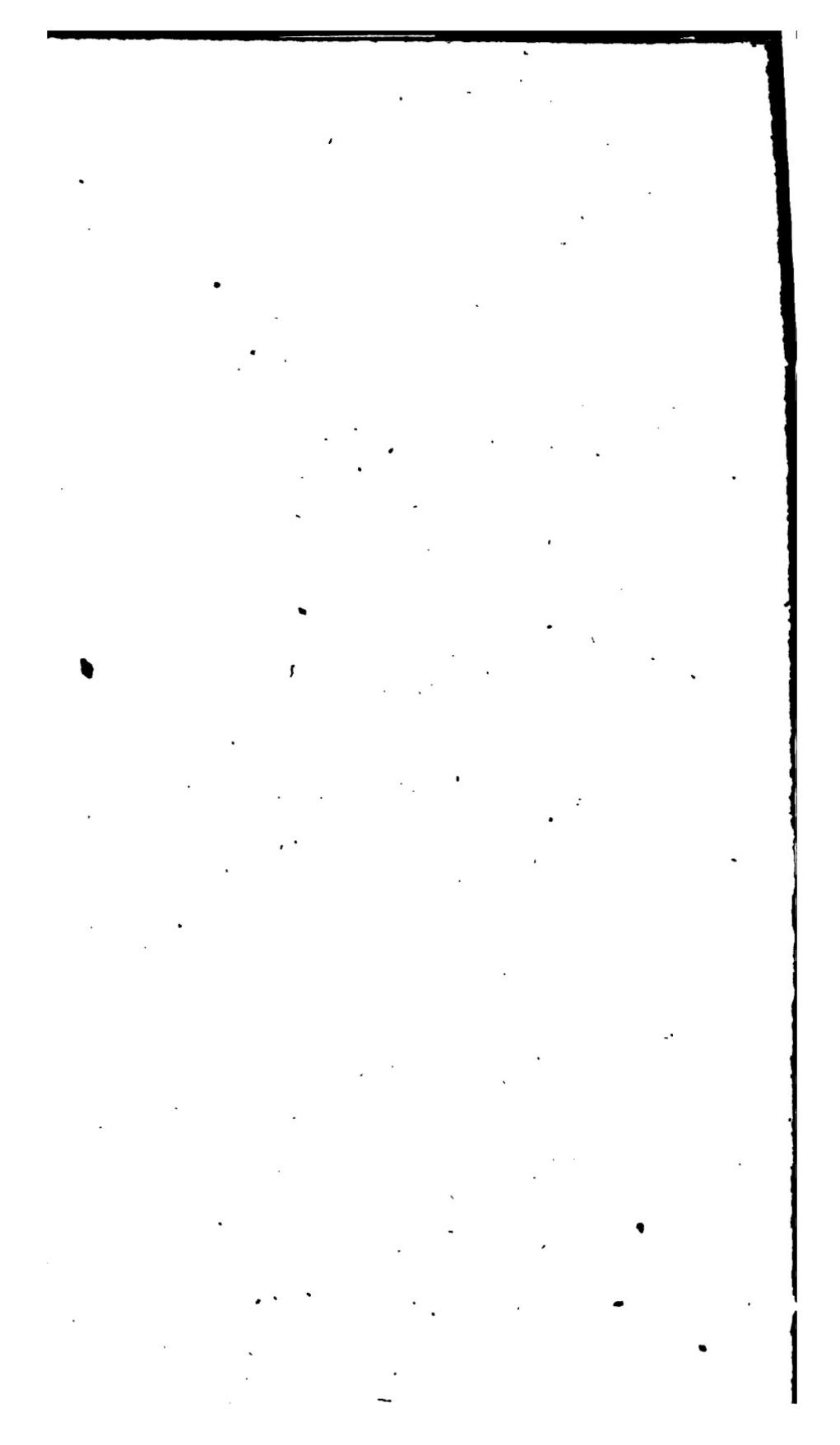
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| <b>WILLS AND TESTAMENTS.</b> |  |  |
|------------------------------|--|--|

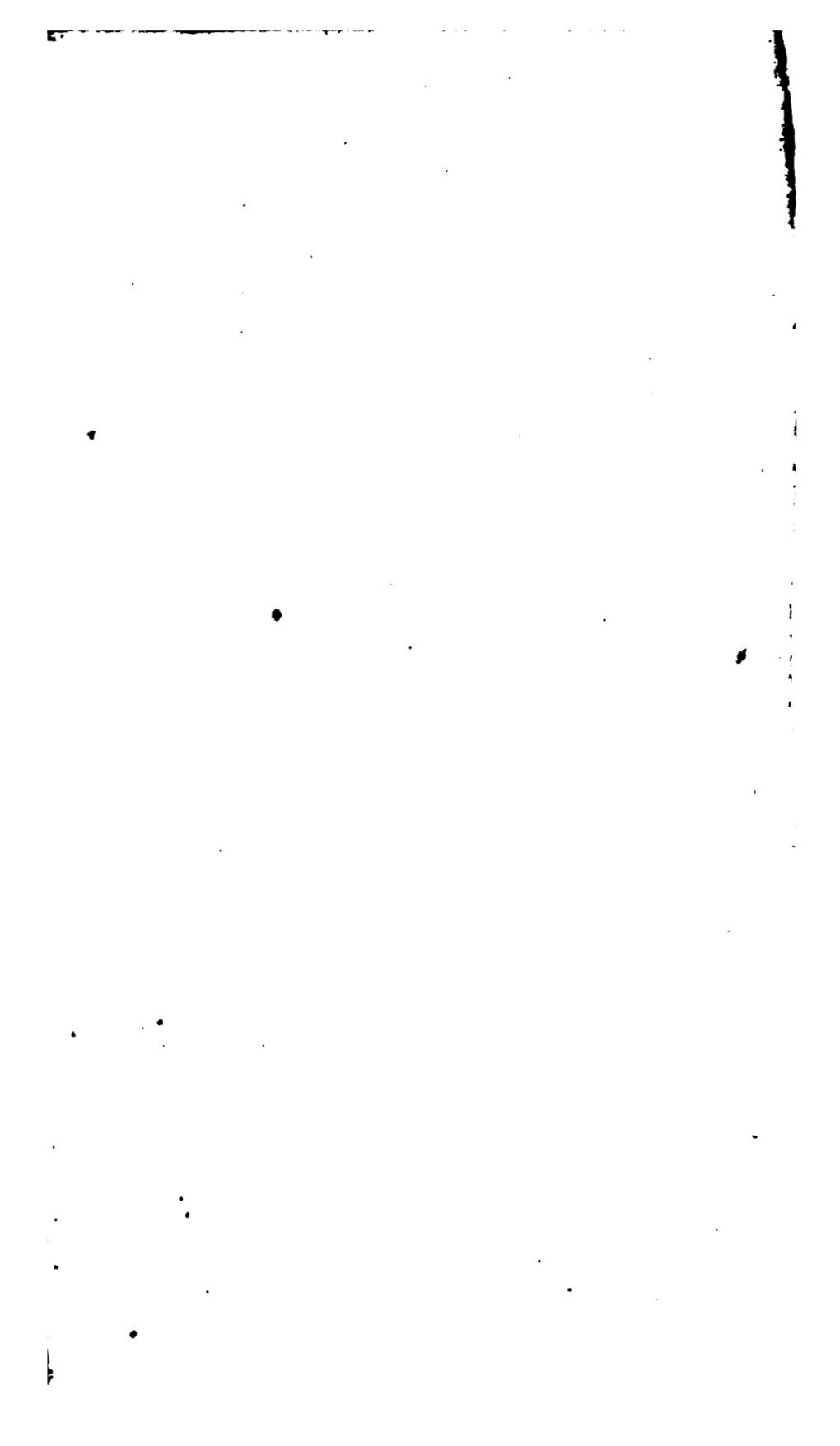
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|------------------------------------------------------------------------------|----|-----|
| Who may make, &c.                                                            |    | 426 |
| Not good as to land, may pass goods, &c.                                     | 2  | 427 |
| Where no provision for posthumous child,                                     | 3  |     |
| Child born between making of will and death of testator,                     |    | 4   |
| Child dying in life time of testator,                                        |    | 5   |
| Marriage and death, leaving issue, revocation of will,                       |    | 6   |
| No will in writing to be repealed by word of mouth,                          |    | 7   |
| Widow, or person, may bequeath, &c.                                          |    | 8   |
| Estate for the life of another devisable,                                    |    | 9   |
| Person withholding will,                                                     | 10 | 428 |
| Nuncupative,                                                                 |    | 11  |
| Where to be proved, &c.                                                      |    | 12  |
| No letters testamentary; no probate of nuncupative will, till after 14 days, |    | 13  |

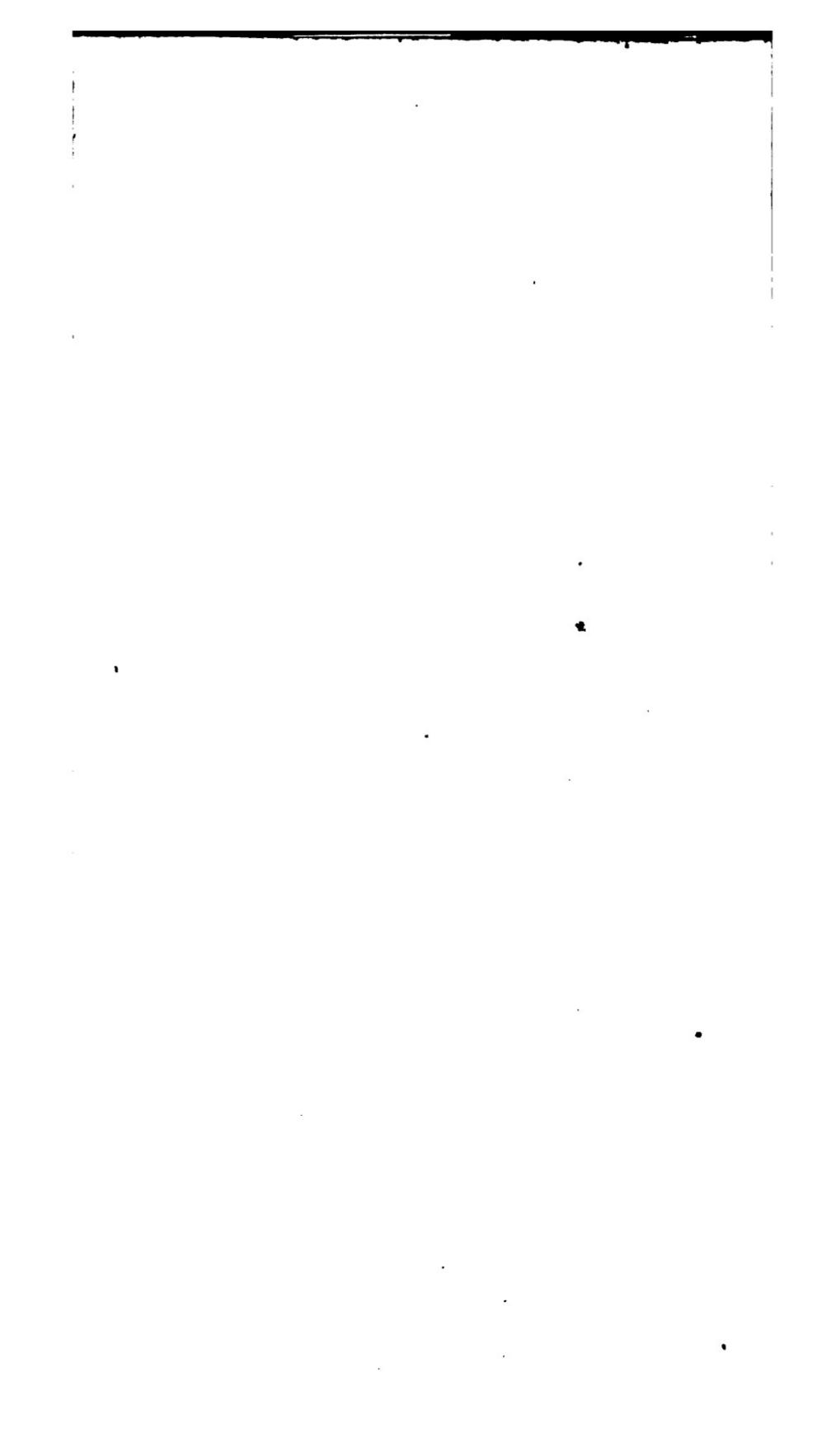
**INDEX:**

|                                              | See. | Page. |
|----------------------------------------------|------|-------|
| <b>Form of a will,</b>                       |      |       |
| Do. codicil to do.                           | 664  |       |
| Do. nuncupative do.                          | 665  |       |
|                                              |      | 666   |
| <b>WITNESSES.</b>                            |      |       |
| For the state, when to be paid,              | 35   | 95    |
| Subscribing witness to bind being absent,    | 50   | 212   |
| Penalty on, for not attending,               | 1    | 124   |
| Penalty for not attending court of sessions, | 3    |       |
| Their costs,                                 | 2    |       |



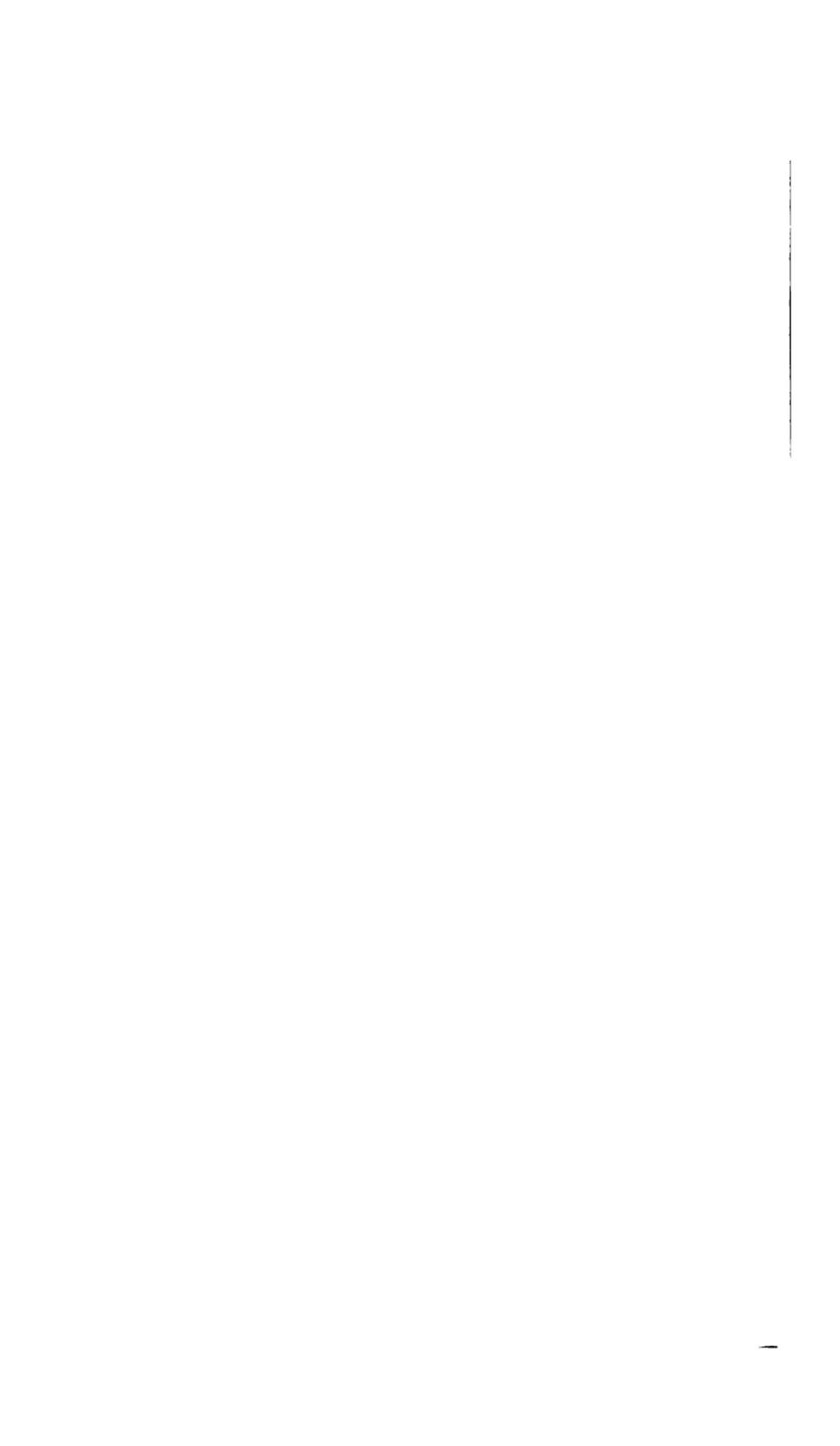
















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